The Tax Institute

Local Tax Club – Melbourne

22 June 2023

Leonda by the Yarra

In Our Sights

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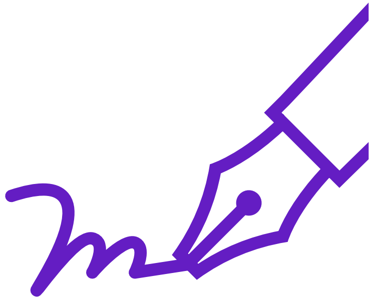
Small business measures

Temporary full expensing



- TFE[1] ends on 30 June 2023
- From 1 July 2023:
  - Medium and large businesses — will have no immediate deduction mechanism (but may continue to apply PS LA 2003/8 — low-cost business assets costing up to $100 (includes GST, so $90.91 ex-GST)
  - SBEs — Instant asset write-off (**IAWO**) threshold[2] will be temporarily increased to $20,000 for eligible depreciable assets (per asset) first used or installed ready for use (**IRFU**) between 1 July 2023 and 30 June 2024
  - Assets costing $20,000 or more — add to small business general use pool and depreciate at **15%** in the first income year and **30%** each year thereafter
  - Expect that pool balances < $20,000 on 30 June 2024 will need to be fully deducted under s 328-210 of the ITAA 1997

Not yet law

[1] Subdiv 40-BB and s 328-181 of the IT(TP)A

[2] Section 328-180 of the ITAA 1997

Temporary instant asset write-off

Aggregated turnover	Date asset acquired (**IAWO/immediate deduction**) or first held (**TFE**)	Date asset first used or installed ready for use (**IRFU**)	Asset cost
IAWO: SBE: **< $10m**	Acquired before 7:30pm on 12 May 2015	Before 7:30pm on 12 May 2015	< $1,000
	Acquired from 7:30 pm on 12 May 2015	From 7:30pm on 12 May 2015 to before 29 January 2019 From 29 January 2019 to before 7:30pm on 2 April 2019 From 7:30pm on 2 April 2019 to before 12 March 2020 From 12 March 2020 to 30 June 2021	< $20,000 < $25,000 < $30,000 < $150,000
	From 7:30pm on 6 October 2020 to 30 June 2023	From 7:30pm on 6 October 2020 to 30 June 2023	Unlimited
	Awaiting detail	From 1 July 2023 to 30 June 2024	< $20,000
	Awaiting detail	Not relevant until after 30 June 2024	< $1,000
Immediate deduction: Medium sized business: **$10m to < $50m**	Acquired from 7:30 pm on 2 April 2019 to 31 December 2020	From 7:30 pm on 2 April 2019 to before 12 March 2020 From 12 March 2020 to 30 June 2021	< $30,000 < $150,000
Immediate deduction: Medium-large business: **$50m to < $500m**	Acquired from 7:30 pm on 2 April 2019 to 31 December 2020	From 12 March 2020 to 30 June 2021	< $150,000
TFE: Businesses **< $5b** (or satisfies alternative income test)	First held from 7:30pm on 6 October 2020 to 30 June 2023	By 30 June 2023	Unlimited

Balancing adjustment events

BAE happens under s 40-295 of the ITAA 1997 if the entity:

- Stops holding the asset (disposal/sale case)
- Stops using the asset, or having it IRFU, for any purpose and expects never to use it, or have it IRFU, again
- Has not used the asset (and if it has been IRFU, the entity stops having it so installed) and decides it will never use it

Tax outcome for SBE that claimed IAWO under s 328-180

Taxable purpose proportion (**TPP**) of the asset's termination value (**TV**) is included in the entity's assessable income under s 328-215(4)

Tax outcome for non-SBE that claimed immediate deduction under s 40-82 or under TFE

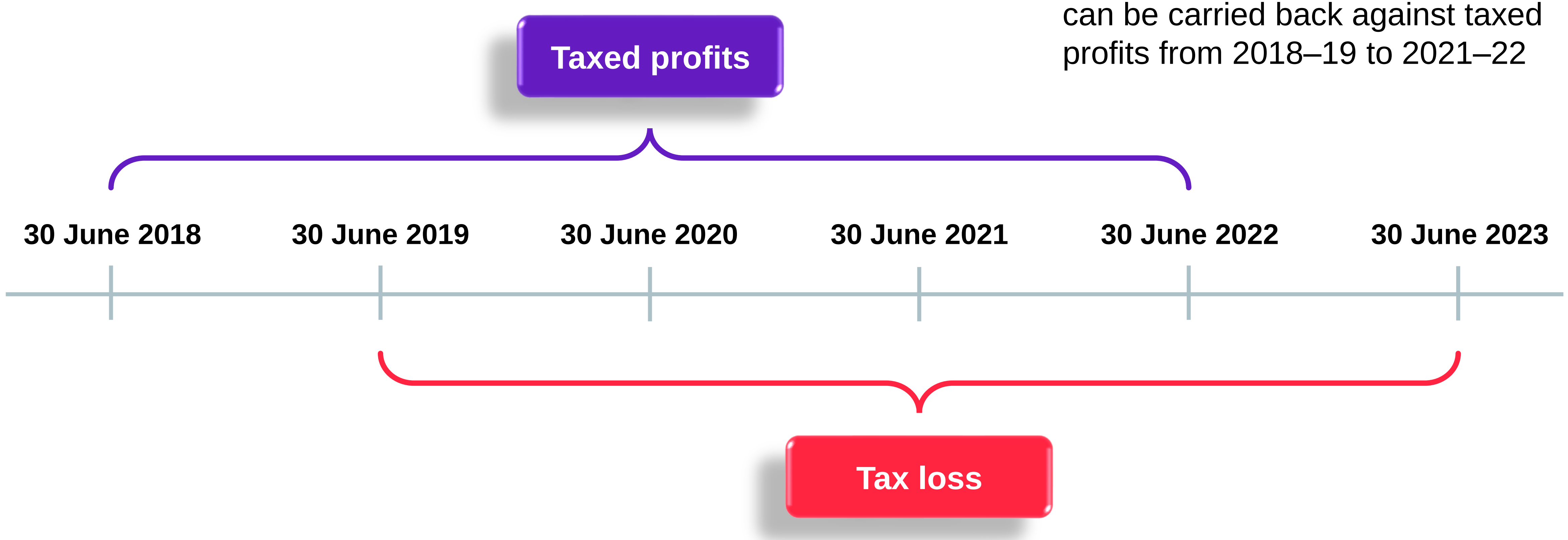
Amount of BA = TV less adjustable value (**AV**)

- Where asset is fully expensed, AV is reduced to nil under s 40-85(1)
- Asset's TV (sale proceeds, or the MV where the asset ceases to be used for any purpose) is included in the entity's assessable income under s 40-285(1)

Loss carry back

Enacted law

Losses from 2019–20 to 2022–23 can be carried back against taxed profits from 2018–19 to 2021–22



Insights | Loss carry back

- Corporate tax entities only
- Convert tax loss to tax offset: loss × corporate tax rate — if entity is a base rate entity in the loss year, use 27.5% for 2019–20, 26% for 2020–21 and 25% for 2021–22 and 2022–23
- Original measure in Schedule 2 to the *Treasury Laws Amendment (A Tax Plan for the COVID-19 Economic Recovery) Act 2020*
- Part 1 of Schedule 3 to the *Treasury Laws Amendment (2021 Measures No. 5) Act 2021* — inserted s 160-16 into the ITAA 1997
  - Allows a corporate tax entity to change an LCB choice — a changed LCB choice takes effect from the day the original choice was made
  - Could result in amendment of numerous income tax return labels over multiple years
- Amended by Schedule 6 to the *Corporate Collective Investment Vehicle Framework and Other Measures Act 2022* — extended measure to 30 June 2023

Small business boosts

Proposed measure

	Technology investment[1]	Skills and training[2]	Energy Incentive
Aggregated turnover	< $50m	< $50m	< $50m
Claim additional deduction equal to 20% of:	… the eligible expenditure incurred on business expenses and depreciating assets that support the business' digital adoption	… the eligible expenditure incurred on external training courses provided to employees	… the cost of eligible depreciating assets that support electrification and efficient energy usage
Maximum deduction	$20,000 per business (up to $100,000 of expenditure)	Unlimited	$20,000 per business (up to $100,000 of expenditure)
Exclusions	Assets to which a balancing adjustment occurs in the same income year	In-house or on-the-job training Contractors, non-employee business owners	Certain assets (e.g. electric vehicles and renewable energy generation)
Eligible period	Expenditure incurred between 7:30pm AEDT on 29 March 2022 and **30 June 2023**	Expenditure incurred between 7:30pm AEDT on 29 March 2022 and 30 June 2024	Eligible assets or upgrades must be first used or IRFU between 1 July 2023 and 30 June 2024

Bill before Parliament

[1] Schedule 5 to the Treasury Laws Amendment (2022 Measures No. 4) Bill 2023

[2] Schedule 4 to the Treasury Laws Amendment (2022 Measures No. 4) Bill 2023

Uplift factor | PAYG and GST instalments

- Reduced from 10% to 2%[1] for 2022–23

  Legislated

- Reduced from 12% to 6%[2] for 2023–24

  Bill before Parliament

- Small businesses and individuals with an aggregated turnover of up to:
  - $10m for GST instalments
  - $50m for PAYG instalments

[1] Schedule 5 to the *Treasury Laws Amendment (Cost of Living Support and Other Measures) Act 2022*

[2] Schedule 4 to the Treasury Laws Amendment (2023 Measures No. 2) Bill 2023
Reduced GDP-adjusted rate will apply to instalments after the enabling legislation receives Royal Assent

Other business issues

Announced but unenacted measures

- Franked distributions funded by capital raisings:
  - Start date of measure delayed from 19 December 2016 to 15 September 2022[1]
  - Senate committee recommendation: amend the Bill[2]
- 3 patent box measures announced in Federal Budget 2021–22 and Federal Budget 2022–23 will not proceed
- But what about the other measures, such as proposed changes to corporate residency rules?

[1] Schedule 5 to the Treasury Laws Amendment (2023 Measures No. 1) Bill 2023

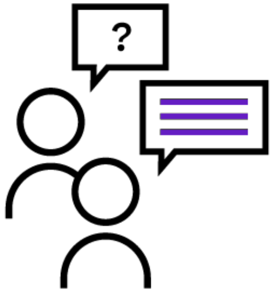
[2] Senate Committee Report recommended the Government consider opportunities to clarify Schedule 5 to the Bill to ensure it appropriately targets the identified behaviour and addresses feedback provided to the committee.

Professional practice profits | PCG

- PCG 2021/4 sets out the ATO's compliance approach to the allocation of profits or income from professional firms in the assessable income of the individual professional practitioner (**IPP**)
- Intended to assist taxpayers to self-assess their arrangements against a series of risk factors — pass 2 gateways ➝ 3 risk zones
- Start date is 1 July 2022
- Final guidance product is a PCG, not a TR
    - Compliance tool, not a statement of the Commissioner's view of the law
    - Demonstrates the ATO's risk assessment of certain arrangements

Changes to Employee Share Scheme rules

Legislated



- Employment ceasing on or after 1 July 2022 is no longer a deferred taxing point[1]
- Employers can make larger offers in connection with ESS in unlisted companies[2] — participants in the ESS can invest up to:
  - $30,000 per participant per year (unexercised options accruable up to 5 years), plus 70% of dividends and cash bonuses; or
  - any amount, if they could immediately take advantage of a planned sale or listing of the company to sell their purchased interests at a profit
- Regulatory requirements removed for offers to independent contractors, where they do not have to pay for interests

[1] Schedule 10 to the *Corporate Collective Investment Vehicle Framework and Other Measures Act 2022*

[2] Schedule 4 to the *Treasury Laws Amendment (Cost of Living Support and Other Measures) Act 2022*

New Digital Games Tax Offset[1]

- 30% refundable tax offset for eligible companies that spend a minimum of $500,000 on qualifying Australian development expenditure to support the development of digital games
- Maximum tax offset that a developer will be able to claim in each year is $20m
- Available in the income year in which the game is completed
- Arts Minister must issue the company with a certificate
- Games will be ineligible if they have gambling elements or cannot obtain a classification rating
- **Start date:** Available from 1 July 2022 to Australian resident companies or foreign resident companies with a permanent establishment in Australia

Bill before Parliament

[1] Schedule 1 to the Treasury Laws Amendment (2022 Measures No. 4) Bill 2023

Car limit | Luxury car tax threshold

Limit | Threshold	2022–23	2023–24
Car limit	$64,741	$68,108
LCT threshold — fuel efficient vehicles	$84,916	$89,332
LCT threshold — other vehicles	$71,849	$76,950

Electric car discount — FBT exemption

Legislated

- Use, or availability for use of, **cars** that are zero or low emissions vehicles and made available by employers to current employees for their private use are exempt from FBT[1]
- Value of the car at the first retail sale must be below the LCT threshold for fuel efficient cars (**$89,332** for 2023–24; **$84,916** for 2022–23)
- **Start date:** Fringe benefits provided on or after 1 July 2022 on eligible vehicles that are first held and used on or after 1 July 2022
- While exempt from FBT, value of the benefit must be included when working out whether an employee has a reportable fringe benefits amount (**RFBA**)

1 Schedules 1 and 2 to the *Treasury Laws Amendment (Electric Car Discount) Act 2022*

2 Operation of the amendment will be reviewed after 3 years in light of electric car take up

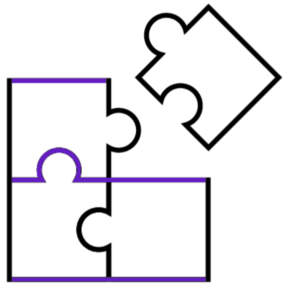
Division 7A and Trust measures

Division 7A | Final guidance on UPEs

- [TR 2010/3W] Income tax: Division 7A loans: trust entitlements
  (withdrawn 30 June 2022, with effect from 1 July 2022)
  Withdrawn
- [PS LA 2010/4W] Division 7A: trust entitlements
  (withdrawn 1 July 2022, with effect from that date)
  Withdrawn
- [PCG 2017/13] Division 7A – PS LA 2010/4 sub-trust arrangements maturing in or after the 2016–17 income year (updated 7 June 2022)
  Extended
- [TD 2022/11] Income tax: Division 7A: when will an unpaid present entitlement or amount held on sub-trust become the provision of 'financial accommodation'?
  New

Division 7A | Final position on UPEs

Applies from 1 July 2022



- Provision of financial accommodation if:
  - Company consents to the trustee retaining an amount it can demand immediate payment of and continuing to use it for trust purposes
  - Does not demand payment of the amount
  - (Irrespective of how the entitlement is expressed in the resolution)
- Not financial accommodation if the amount is set aside and held on sub-trust for the company’s sole benefit
- Financial accommodation if an amount is set aside and held on sub-trust and the company consents to the funds being used by the company’s shareholder/associate

Division 7A | Key points

Issue	Discussion
Replaces 2010 products from 1 July 2022	Guidance in TD 2022/11 applies to trust entitlements arising on or after 1 July 2022
ATO's compliance approach	**Will not devote compliance resources** to arrangements conducted in accordance with TR 2010/3 (and PS LA 2010/4) in respect of trust entitlements arising on or before 30 June 2022
UPEs arising before 16 December 2009	**Grandfathered** — Company is not taken to provide financial accommodation to the trustee where it does not demand payment of these UPEs
Evidencing a sub-trust	Depends on deed and trustee's powers, but most sub-trusts will be a Transparent Trust per PS LA 2000/2 and relieved from the requirement to lodge a tax return
Existing maturing sub-trust arrangements	**Administrative approach extended** — If principal is not repaid on or before the maturity date, Commissioner accepts that a new loan on complying Div 7A terms (s 109N) may be put in place — allows the amount to be repaid over a further 7-year period with annual payments of both principal and interest (PCG 2017/13)
Legislative reforms	Still waiting, 11 years on … Reforms will apply from first 1 July after Royal Assent

Division 7A | Legacy sub-trust arrangements

In accordance with PS LA 2010/4W

	Option 1 (7-year) arrangement		Option 2 (10-year) arrangement	
	Earliest year	Latest year	Earliest year	Latest year
UPE arises	30 June 2010	30 June 2022	30 June 2010	30 June 2022
Held on sub-trust	15 May 2011	15 May 2023	15 May 2011	15 May 2023
Maturity date	14 May 2018	14 May 2030	14 May 2021	14 May 2033
Div 7A loan if not repaid by maturity	2017–18	2029–30	2020–21	2032–33
Liability to make first MYR	30 June 2019	30 June 2031	30 June 2022	30 June 2034
Liability to make last MYR	30 June 2025	30 June 2037	30 June 2028	30 June 2040

See this article by The Tax Institute's Tax Policy & Advocacy team for the complete tables and more information (TTI members only)

Division 7A | Loan considerations

- Identify 2022–23 loans — ensure they are fully repaid or managed (with complying loan agreement) before lodgment day of 2023 tax return
- Minimum yearly repayments (**MYR**):
  - Required by 30 June 2023 for complying loans made in 2021–22 and prior income years
  - If using a dividend via journal entry to make MYR:
    - Ensure dividend is declared by 30 June 2023 (evidenced by directors' resolution)
    - Ensure distribution statement is issued to shareholder by 31 October 2023
    - Otherwise, may not conform with 'principal of mutual set-off',[1] may not be an effective payment and therefore may not be a valid MYR
  - Seek ATO discretion under s 109RD if needed — catch-up MYR from previous years may be required
- Division 7A benchmark interest rate for 2023–24: 8.27%

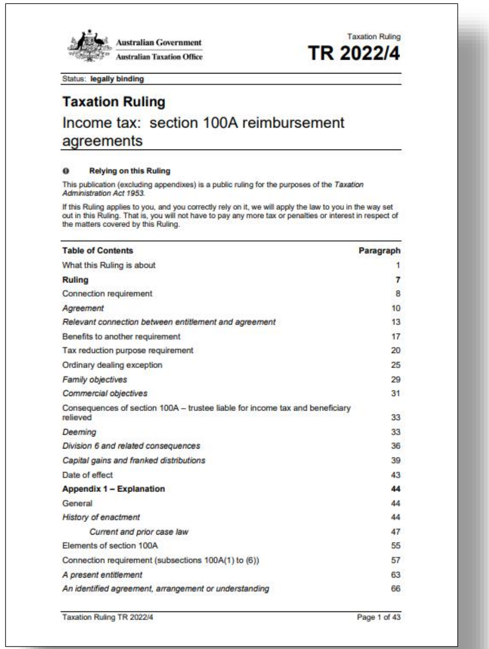
[1] See MT 2050 for ATO guidance on payments by journal entry

Section 100A | Final ATO guidance

TR 2022/4

Income tax: section 100A reimbursement agreements

TTI submission



Australian Government
Australian Taxation Office

Taxation Ruling
TR 2022/4

Status: **legally binding**

Taxation Ruling

Income tax: section 100A reimbursement agreements

Relying on this Ruling

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

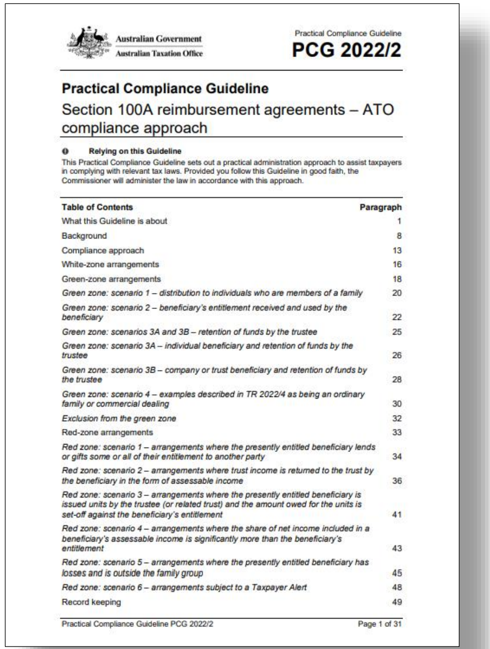
If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not have to pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

Taxation Ruling TR 2022/4 Page 1 of 43

PCG 2022/2[1]

Section 100A reimbursement agreements – ATO compliance approach

TTI submission



Australian Government
Australian Taxation Office

Practical Compliance Guideline
PCG 2022/2

Practical Compliance Guideline

Section 100A reimbursement agreements – ATO compliance approach

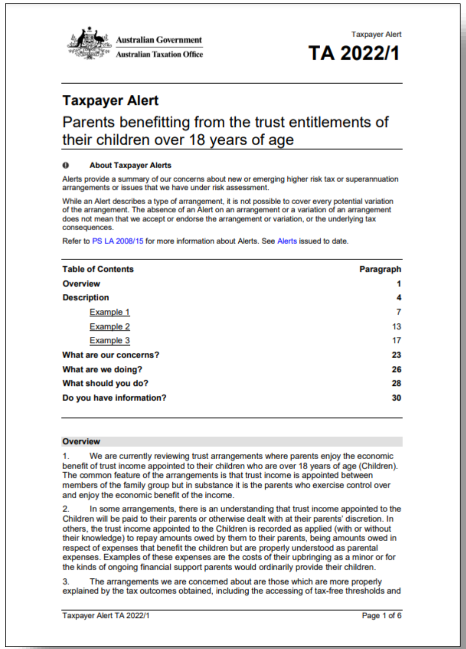
Relying on this Guideline

This Practical Compliance Guideline sets out a practical administration approach to assist taxpayers in complying with relevant tax laws. Provided you follow this Guideline in good faith, the Commissioner will administer the law in accordance with this approach.

Practical Compliance Guideline PCG 2022/2 Page 1 of 31

TA 2022/1[2]

Parents benefitting from the trust entitlements of their children over 18 years of age



Australian Government
Australian Taxation Office

Taxpayer Alert
TA 2022/1

Taxpayer Alert

Parents benefitting from the trust entitlements of their children over 18 years of age

About Taxpayer Alerts

Alerts provide a summary of our concerns about new or emerging higher risk tax or superannuation arrangements or issues that we have under risk assessment.

While an Alert describes a type of arrangement, it is not possible to cover every potential variation of the arrangement. The absence of an Alert on an arrangement or a variation of an arrangement does not mean that we accept or endorse the arrangement or variation, or the underlying tax consequences.

Refer to PS LA 2008/15 for more information about Alerts. See Alerts issued to date.

Overview

1. We are currently reviewing trust arrangements where parents enjoy the economic benefit of trust income appointed to their children who are over 18 years of age (Children). The common feature of the arrangements is that trust income is appointed between members of the family group but in substance it is the parents who exercise control over and enjoy the economic benefit of the income.

2. In some arrangements, there is an understanding that trust income appointed to the Children will be paid to their parents or otherwise dealt with at their parents' discretion. In others, the trust income appointed to the Children is recorded as applied (with or without their knowledge) to repay amounts owed by them to their parents, being amounts owed in respect of expenses that benefit the children but are properly understood as parental expenses. Examples of these expenses are the costs of their upbringing as a minor or for the kinds of ongoing financial support parents would ordinarily provide their children.

3. The arrangements we are concerned about are those which are more properly explained by the tax outcomes obtained, including the accessing of tax-free thresholds and

Taxpayer Alert TA 2022/1 Page 1 of 6

[1] Compendium exists

[2] Not released in draft

Requirements for s 100A to apply

1. A beneficiary who is not under a legal disability has a present entitlement (**PE**) to a share of trust income
2. PE arose out of a reimbursement agreement (**RA**)
3. A benefit is provided to someone other than the beneficiary
4. Exclusions:
    - Agreement excludes one that was not entered into for a purpose of reducing (or deferring) a person's income tax
    - Agreement was not entered into in the course of ordinary family or commercial dealing (**OFCD**)

Section 100A | Flow chart

s 100A(1) and (2)

Is there a s 97 beneficiary (not under a legal disability) who is PE to a share of trust income?

No → Section 100A does not apply

Yes ↓

s 100A(7)

Is the PE connected with a RA?

- RA requires an 'agreement' (can be informal)
- RA = payment of money or transfer of property to, or the provision of services or other benefits for, someone other than the beneficiary

No → Section 100A does not apply

Yes ↓

s 100A(8)

Was the agreement one that was **NOT** entered into for a purpose of reducing a person's income tax?

Yes → Section 100A does not apply

No ↓

s 100A(13)

Was the agreement entered into in the course of 'ordinary family or commercial dealing'?

Yes → Section 100A does not apply

No → Section 100A applies

Section 100A does not apply

Section 100A applies

Consequences of s 100A applying

- Beneficiary is treated as if they are not PE to that share of the trust income and were never PE to it
  - No one is PE to that share of the trust income for tax law purposes
  - This is the case even if there is a default beneficiary clause in the deed
  - Beneficiary remains PE to the trust income under trust law concepts
- Trustee is assessed under s 99A
- Franking credits still available to the trustee (but no refund of excess credits)
- Commissioner can amend an assessment at any time for the purpose of giving effect to s 100A — unlimited amendment period[1]

[1] Item 17 of the table in s 170(10) of the ITAA 1936

Includes assessments of beneficiaries

Section 100A | Recent case law

- *FCT v Guardian AIT Pty Ltd ATF Australian Investment Trust*[1]
  [2023] FCAFC 3, Perry, Derrington and Hespe JJ
  - Appeal from: *Guardian AIT Pty Ltd ATF Australian Investment Trust v FCT* [2021] FCA 1619 (21 December 2021), Logan J
  - Held 2012–13 arrangement was not subject to s 100A of the ITAA 1936, but Part IVA applied
  - Draft ATO Decision impact statement — issued 24 April 2023

- *B&F Investments Pty Ltd as trustee for the Illuka Park Trust v FCT*
  [2023] FCAFC 89 (9 June 2022), Moshinsky, Colvin and Hespe JJ
  - Appeal from *BBlood Enterprises Pty Ltd v FCT* [2022] FCA 1112 (19 September 2022), Thawley J
  - Held share buy-back arrangement was subject to s 100A of the ITAA 1936
  - Trustee's appeal dismissed; Corporate beneficiary's appeal necessarily upheld; No need to consider whether s 207-150 of the ITAA 1997 applied (about dividend stripping)

[1] See example 5 of the ATO's 2014 web guidance

Section 100A | Guardian AIT: structure

Mr Springer
(non-resident
beneficiary)

4 AIT distributed franked dividend income to Mr Springer, who was not required to pay tax on the distribution (beyond the tax AITCS paid at **Step 2** because he was a non-resident)

Guardian AIT Pty Ltd
as trustee for the
Australian Investment Trust

100%
shareholder

AITCS Pty Ltd
(corporate beneficiary)

1 AIT distributed its trust income to its corporate beneficiary

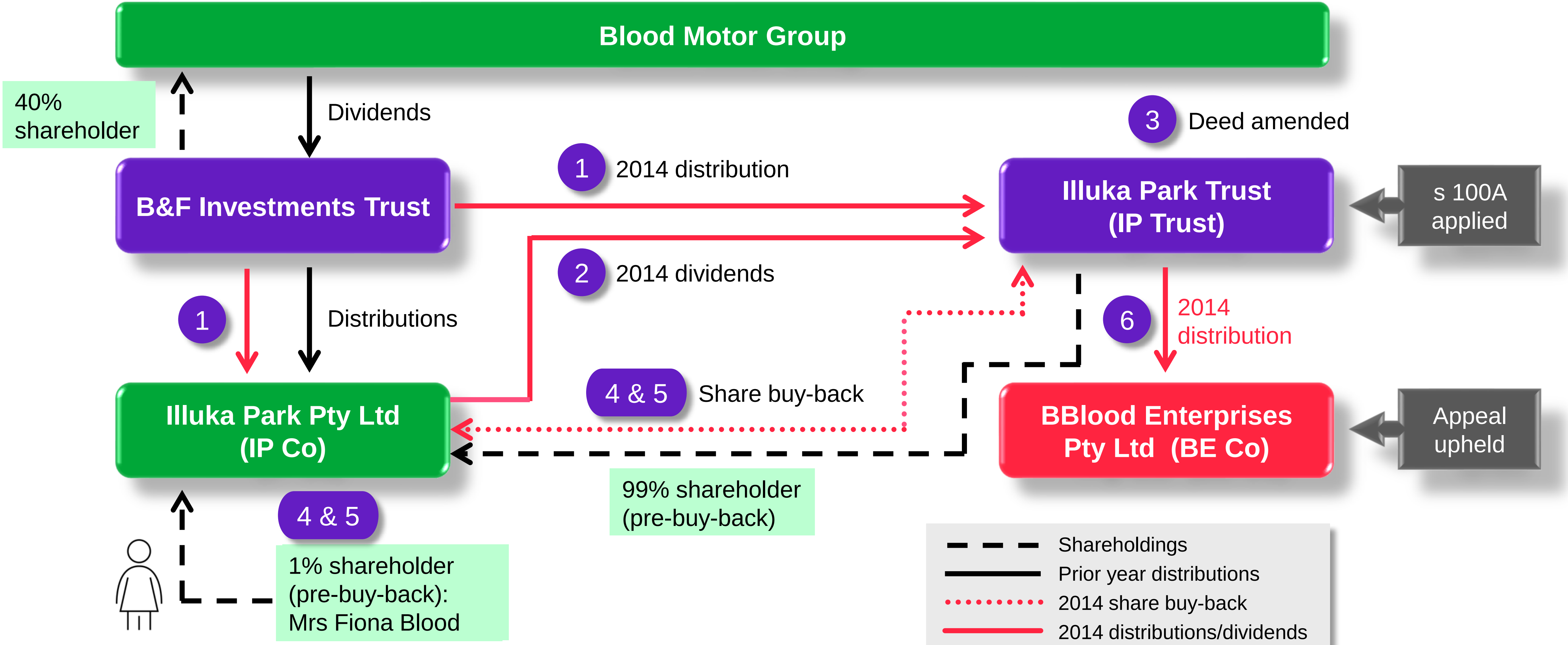
2 AITCS paid income tax on the distribution

3 AITCS paid a fully franked dividend to AIT (which owned 100% of the shares in AITCS)

Section 100A | Guardian AIT decision

<table>
<tr><th rowspan="2">Income year</th><th colspan="2">First instance (FCA)</th><th colspan="2">On appeal (FCAFC)</th></tr>
<tr><th>Section 100A</th><th>Part IVA</th><th>Section 100A</th><th>Part IVA</th></tr>
<tr><td>2012</td><td rowspan="3">No reimbursement agreement so s 100A did not apply
In any case, was ‘ordinary family or commercial dealing’</td><td rowspan="3">Did not apply</td><td>Commissioner did not appeal this decision</td><td>Did not apply</td></tr>
<tr><td>2013</td><td>No reimbursement agreement so s 100A did not apply</td><td>Applied</td></tr>
<tr><td>2014</td><td colspan="2">Commissioner did not appeal the FCA’s decision (UPE managed as Division 7A loan)</td></tr>
</table>

Section 100A | BBlood: structure



Section 100A | BBlood: Illuka Park steps

Share buy-back and related transactions

1. The trustee of the B&F Investments Trust resolved to distribute the trust income for the period ended 31 March 2014 to:
   - **IP Trust**: $123,238
   - **IP Co**: remaining $2,999,496 (UPE)
2. March and April 2014 | IP Co paid franked dividends to the IP Trust in of $181,139
3. 13 June 2014 | The IP Trust Deed was varied to amend definition of ‘income’ — consequence of amendment to the deed meant that the trust income for 2013–14 was **$304,377**, comprising:
   - distribution made by the B&F Investments Trust on 31 March 2014 of $123,238
   - dividends paid by IP Co of $181,139
4. 25 June 2014 | Off-market share buy-back whereby IP Co bought back 99 shares held by the IP Trust for $99 against share capital account and $10,189,770 against retained earnings of IP Co. Section 159GZZZP of the ITAA 1936 treated $10m as dividend
5. Franking credits of $4,367,002 allocated to dividend arising from the share buy-back — wholly sheltered the tax liability
6. 30 June 2014 | Trustee of IP Trust resolved to distribute all the trust income for 2013–14 ($304,377) to BE Co

Section 100A | ATO's compliance approach

PCG 2022/2

1 July 2014 | **1 July 2022**

Arrangements entered into before 1 July 2014	Arrangements entered into before 1 July 2022	Arrangements entered into on or after 1 July 2022
ATO generally won't apply compliance resources	Taxpayers will be entitled to apply administrative position in [2014 web guidance] where this is more favourable to taxpayers than the PCG	Full PCG applies

Section 100A | Guidance on meaning of OFCD

- Arrangement is artificial, contrived, is overly complex or contains steps that might be explained by objectives different to those said to be behind the OFCD
- Circumstances or conduct is inconsistent with the legal or economic consequences of the beneficiary's entitlement, such as:
  - Appearing unlikely that the beneficiaries will receive their entitlements — e.g. the assets or funds representing the entitlement are purportedly paid or lent to others without any intention of being returned or repaid
  - Funds representing the entitlement are dealt with in a way that is inconsistent with the beneficiary's right to demand the entitlement
  - Beneficiaries are not informed of their entitlements
- Income entitlements have actually been paid to the beneficiary and there is an agreement for them to pay some of or all their entitlement to another person

Section 100A | Retention of records

Unlimited period of review means trustees must retain sufficient records to explain transactions that have happened

- Trust deed (including amendments), trustee resolutions, contact details of current/any former trustees
- Notes, records of discussions or meetings explaining the transactions that have happened or calculations made (not required to document the manner of the distributions)
- Details of how the beneficiary was notified of their PE to trust income
- Details of how the trust income was received or used by the beneficiary
- Details of how the trustee utilised the beneficiary's PE if they were not paid
- Copies of loan agreements and records showing how loan repayments were satisfied
- Intra-family arrangements — keep records that are ordinarily created for other purposes and demonstrate the objectives an arrangement was intended to achieve and how it would achieve them (e.g. file notes of meetings between the trustee and their registered tax agent)

[ATO web guidance]

Trust distributions | Other considerations

Read the deed!

- Do not backdate resolutions — heed date in the deed (e.g. may be 29 June)
- Ensure distributions are made only to valid beneficiaries
- Ensure capital distributions are made only to capital beneficiaries
- Apply streaming rules correctly
- Apply trust loss provisions correctly
- Where FTE/IEE has been made — trustee is liable for FTDT on ‘distributions’ made outside the ‘family group’
- TFN reporting rules — withholding if beneficiary’s details not TFN provided (allow sufficient time to obtain TFNs for newly incorporated corporate beneficiaries)

[1] In Subdiv 115-C and Subdiv 207-B of the ITAA 1997 and Division 6E of Part III of the ITAA 1936

ATO checklist | Trustee resolutions

- Do you have a complete copy of the trust deed?
- Who can you appoint income or capital to?
- Has the trust vested?
- Is there a family trust election in force for the trust?
- When do you have to make resolutions?
- Is there a standard format for a resolution?
- Does a resolution have to be in writing?
- Is the wording of your resolution clear and unambiguous?
- Is the entitlement vested?
- Can the entitlement be taken away?
- Variation of income resolutions
- How should you calculate and report the income of the trust?
- Are you ‘streaming’ capital gains or franked distributions?
- Are you seeking to ‘stream’ other types of income?
- Will records created after 30 June be accepted as evidence of the making of the resolution by that date?
- Do you have to prepare the trust accounts by 30 June to make beneficiaries presently entitled to trust income?
- What happens if you make a resolution after 30 June?
- Have all entitled beneficiaries quoted their tax file number (TFN) to you?

Superannuation measures

Superannuation | Key data

Cap | Rate	2022–23	2023–24
Concessional contributions cap	$27,500	$27,500
Non-concessional contributions cap	$110,000	$110,000
Bring forward rule (depends on amount of TSB)	Up to $330,000	Up to $330,000
Transfer balance cap	$1.7m	$1.9m
CGT cap	$1.650m	$1.705m
Rate of SG (based on the date of payment, not when the work is done)	10.5%	11.0%

Minimum pension drawdown rates

Age	2008–09 to 2010–11	2011–12 to 2012–13	2013–14 to 2018–19	2019–20 to 2022–23	From 2023–24
Under 65	2.0%	3.00%	4%	**2.0%**	4%
65–74	2.5%	3.75%	5%	**2.5%**	5%
75–79	3.0%	4.50%	6%	**3.0%**	6%
80-84	3.5%	5.25%	7%	**3.5%**	7%
85–89	4.5%	6.75%	9%	**4.5%**	9%
90–94	5.5%	8.25%	11%	**5.5%**	11%
95 or more	7.0%	10.50%	14%	**7.0%**	14%

Source: Superannuation Legislation Amendment (Superannuation Drawdown) Regulations 2022

Superannuation | Legislative changes

Legislated

- Monthly $450 minimum income threshold removed for salary or wages to count towards the SG[1]
- Work test removed for individuals aged 67–74[1]:
  - Removed for non-concessional contributions (including bring-forward)
  - Removed for salary sacrifice contributions
  - Work test must still be satisfied to make personal deductible contributions[2]
- **Start date:** From 1 July 2022

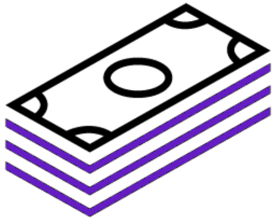
1 Schedule 1 to the *Treasury Laws Amendment (Enhancing Superannuation Outcomes For Australians and Helping Australian Businesses Invest) Act 2022*

2 Schedule 4 to the *Treasury Laws Amendment (Enhancing Superannuation Outcomes For Australians and Helping Australian Businesses Invest) Act 2022*

3 Section 290-165(1A) of the ITAA 1997

Making contributions | Considerations

- Allow time for processing and receipt of payment — particularly when using external payroll services, DSPs and commercial clearing houses
- SG for June 2023 quarter:
  - Payment must be received by the fund (or the ATO's SBSCH) by 28 July 2023
  - SG statement must be lodged and SGC liability paid by 28 August 2023 if the employer has an SG shortfall for an employee for the quarter
- Income tax deduction in 2022–23 available only if the contribution is 'made'[1] **(i.e. fund receives the payment) by 30 June**
- Treating a late payment as non-deductible does not resolve the SGC issue — still have an SGC liability (and non-deductible only when paid to ATO as SGC)
- Check for any SG shortfalls for the other 3 quarters too (Sep, Dec and Mar)



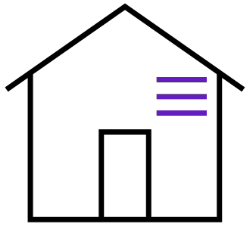
[1] Section 290-60(3) of the ITAA 1997 and paras 12–13 of TR 2010/1

Non-arm's length income (NALI) provisions

- Section 295-550 of the ITAA 1997 was amended in relation to income derived in the 2018–19 and later income years (regardless of when scheme was entered into)
- ATO will not allocate compliance resources to determine whether the NALI rules apply to a complying superannuation fund for the 2018–19 to 2022–23 income years where the fund incurred NALE (as described in paras 10–13 of LCR 2021/2) of a general nature that has a sufficient nexus to all ordinary and/or statutory income derived by the fund in those income years (e.g. NALE on accounting services) (PCG 2020/5)
- Transitional compliance approach applies only to general expenditure incurred on or before 30 June 2023
- Proposed amendments announced in the Federal Budget 2023–24 — awaiting further details but will limit income of SMSFs and small APRA-regulated funds that is taxable as NALI to 2× level of a general expense

First Home Super Saver Scheme

Legislated

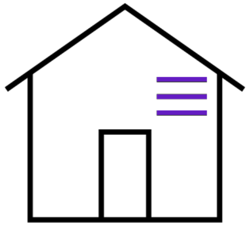


- Previously:
  - Annual limit of $15,000 of voluntary contributions to FHSSS
  - Maximum releasable amount of $30,000
- Maximum releasable amount of voluntary concessional and non-concessional contributions increased to $50,000[1]
- **Start date:** From 1 July 2022

[1] Schedule 2 to the *Treasury Laws Amendment (Enhancing Superannuation Outcomes For Australians and Helping Australian Businesses Invest) Act 2022*

Downsizer contributions

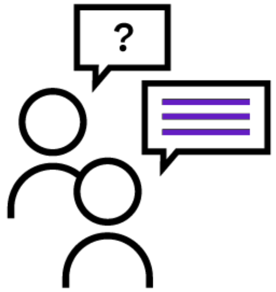
Legislated



- Sell ownership interest in a dwelling that is eligible for a full or partial main residence exemption
- Ownership interest was continuously held for at least 10 years
- Up to $300,000 (exception to non-concessional contributions cap)
- Eligibility age reduced from 65 to 60 years
- **Start date:** From 1 July 2022

[1] Schedule 3 to the *Treasury Laws Amendment (Enhancing Superannuation Outcomes For Australians and Helping Australian Businesses Invest) Act 2022*

Better targeted superannuation concessions

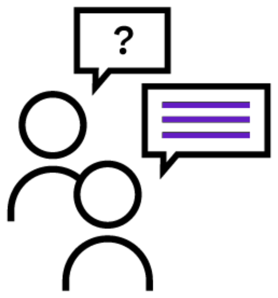


- Announced on 28 February 2023
- Consultation paper released on 31 March 2023
- From 1 July 2025, superannuation tax concessions available to individuals whose total superannuation balances exceed $3m will be reduced
  - Headline tax rate will be 30%, up from 15%, for earnings corresponding to the proportion of an individual's superannuation balance > $3m — additional 15% tax assessed to individual
  - Earnings relating to assets ≤ $3m threshold will continue to be taxed at 15% (or 0% up to TBC if held in a retirement pension account)
- Issues:
  - Taxation of unrealised gains and losses
  - Consideration given to payment options for those with liquidity pressures
  - Payment of additional tax on realised gains in cases involving deceased estates

TTI submission

ATO web guidance

Payday Super

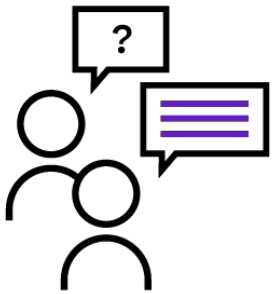


- Announced on 2 May 2023
- From 1 July 2026, employers will be required to pay their employees' super at the same time as their salary and wages
- Consultation and consequential changes to the design of the SGC will occur
- Questions:
  - How will be the SGC be redesigned to deal with more frequent payments, as often as weekly?
  - What will the penalty be if an employer is just one day late?
  - How will the timeframes be practically condensed when using external payroll providers and clearing houses, where the timing of the receipt of the contribution by the fund is usually beyond the control of the employer once the payment leaves their bank account?
  - What changes will be made to reporting obligations?

ATO web guidance

Tax issues for Individuals

Work-related expenses | Considerations



Deduction	Discussion — Occupation and industry specific guides
Car expenses (**D1**)	• Rate for 2022–23: 78 cents per km • Rate for 2023–24: 85 cents per km • ATO's draft administrative approach for EVs in PCG 2023/D1: 4.2 cents per km for 2022–23
Travel expenses (**D2**)	• Expenses incurred in using someone else's car • TD 2022/10 Income tax: what are the reasonable travel and overtime meal allowance expense amounts for the 2022–23 income year? • TR 2021/1 *Income tax: when are deductions allowed for employees' transport expenses?* • TR 2021/4 *Income tax and fringe benefits tax: employees: accommodation and food and drink expenses, travel allowances, and living-away-from-home allowances* • TR 95/34 *Income tax: employees carrying out itinerant work – deductions, allowances and reimbursements for transport expenses*

Work-related expenses | Considerations

Deduction	Discussion [Occupation and industry specific guides](#)
Clothing expenses (**D3**)	• Claims allowed only for occupation-specific clothing, protective clothing, compulsory work uniforms and registered non-compulsory work uniforms (plus cleaning of such clothing) • No deduction for conventional clothing, even if it's compulsory or worn only at work
Self-education expenses (**D4**)	• $250 non-deductible threshold has been removed from 1 July 2022 (former s 82A of the ITAA 1936 repealed)
Working from home expenses (**D5**)	• Fixed rate method (52 cents) and shortcut method (80 cents) gone from 1 July 2022 • Actual cost method available • Alternatively, ATO's administrative approach in PCG 2023/1 — ATO will not apply compliance resources if claim WFH expenses at the rate of 67 cents per hour (note inclusions/exclusions) • 1 March 2023 to 30 June 2023 (and later income years) — must keep a record of the total number of **actual hours WFH** • 1 July 2022 to 28 February 2023 only — may keep a representative record of the total number of hours WFH

Rental properties | Considerations

- **Declare all rental income** — and declare gross rent, not net rent then claim again
- **Deduction issues:**
  - ‘Mates’ rates’ — cannot claim full deductions for expenses
  - Apportion interest where private use or property is not genuinely available for rent, or mixed use of borrowed funds
  - Correctly apportion borrowing expenses over 5-year period, or term of loan if less (not straight line)
- **Correct treatment of repairs** — initial repairs and capital works (Division 43)
- **Rules for residential rental properties from 1 July 2017:**
  - Correct treatment of second-hand depreciable assets
  - No deduction for travel expenses

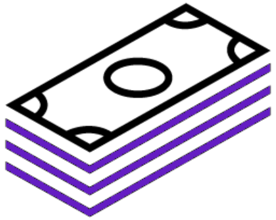
ATO web guidance
Guide: Rental Properties 2023

CGT | Considerations

- Part IVA implications of 'wash sales': TR 2008/1
- CGT discount — be aware of s 115-45 of the ITAA 1997:
  - CGT event happens to shares/units where hold at least 10% of interests
  - CGT discount not available even where shares/units held for at least 12 months and the majority (> 50%) of underlying assets have been owned by the company/trust for less than 12 months
- Non-residents — not entitled to CGT discount[1] or main residence exemption
- Cryptocurrency — switching one crypto asset for another is a CGT event
- Consider whether a capital gain from CGT event J2, J5 or J6 has been made when a CGT event or balancing adjustment event happens to a replacement active asset where Subdiv 152-E small business rollover was previously chosen

[1] Special rules apply in s 115-115 of the ITAA 1997 where asset was held before 8 May 2012

Taxation treatment of digital currency[1]



- Unintended consequence of El Salvador recognising bitcoin as legal tender on 7 September 2021 — potential that bitcoin may be a ‘foreign currency’ for the purposes of the ITAA 1997
- Inconsistent with current policy intent — Bitcoin and other similar digital currencies were never intended to be foreign currencies for Australian income tax purposes
- Clarifies that digital currencies (such as Bitcoin) continue to be excluded from the income tax treatment of foreign currency
- Board of Taxation undertaking Review of the Tax Treatment of Digital Assets and Transactions in Australia
- **Start date:** Proposed to be 1 July 2021

Bill before Parliament

[1] Schedule 2 to the Treasury Laws Amendment (2022 Measures No. 4) Bill 2023

Increase in Medicare levy low-income thresholds[1]

Bill before Parliament

Taxpayer	Increase from 1 July 2022
Singles	from $23,365 to **$24,276**
Families	from $39,402 to **$40,939**
Single seniors and pensioners	from $36,925 to **$38,365**
Family seniors and pensioners	from $51,401 to **$53,406**

For each dependent child or student, the family income threshold increases by a further **$3,760**

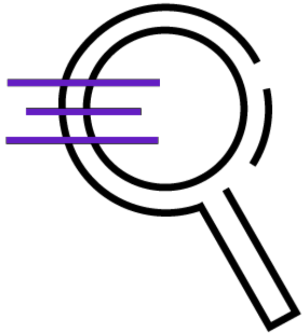
[1] Schedule 1 to the Treasury Laws Amendment (2023 Measures No. 2) Bill 2023

ATO | Administration | Cyber security

ATO administration | Considerations

- New lodgment deferral function in OSfA (ATO web guidance)
- Proposed amnesty for small businesses (aggregated turnover < $10m) — remit FTL penalties for outstanding tax statements:
  - Lodged between 1 June 2023 and 31 December 2023
  - Initially due between 1 December 2019 and 28 February 2022
  - Income tax returns, activity statements and FBT returns (not SG statements or TPARs)
  - Penalty remission will apply automatically — you won't need to apply for it
  - No other penalties or GIC will be remitted as part of this amnesty
  - ATO has advised that the amnesty does not apply to privately owned groups or individuals controlling over $5 million of net wealth
- Supported lodgment program

Tax Practitioners Board | Considerations



- TPB's new CPD requirements from 1 July 2022
- TPB's increased compliance program from 1 July 2023
  - Funding of $30.4m over 4 years from 1 July 2023
  - To increase compliance investigations
- Code of Professional Conduct
- Proposed amendments to TASA following Review of TPB
  (Schedule 3 to the Treasury Laws Amendment (2023 Measures No. 1) Bill 2023)

Bill before Parliament

- Review of TPB and Government Response

Cyber security | Considerations

- TPB(PN) 5/2022 Proof of identity requirements for client verification
- ATO guidance: Agent client verification methods
- Client agent linking — agent nomination process (ATO targeted consultation)
- Protect your myGovID — secure emails and devices, use MFA/2FA
- Beware of scams:
    - Verify or report a scam
    - How to identify a phone scam
    - How to identify an email or SMS scam
    - How to identify a social media scam

Increase in penalty unit

Legislated

- Schedule 1 to the *Crimes Amendment (Penalty Unit) Act 2022* amended the *Crimes Act 1914* to increase the amount of the Commonwealth penalty unit from $222 to $275
- **Start date:** Offences committed on or after 1 January 2023
- Planned 3-yearly indexation not impacted
  - Next round of indexation scheduled for 1 July 2023
  - Penalty unit from 1 July 2023 — more than $300

Key ATO guidance

Topic	ATO public advice and guidance (PAG)
PSI rules	TR 2022/3 provides the Commissioner's view on the application of the PSI rules contained in Part 2-42 of the ITAA 1997 (consolidates TR 2001/7W and TR 2001/8W)
Corporate tax residency	• PCG 2018/9 sets out a transitional compliance approach period that applies to enable eligible foreign incorporated companies to change their governance arrangements so that their central management and control is exercised outside Australia by the end of the period • PCG was updated on 22 December 2022 to further extend the (already extended) transitional period from 31 December 2022 to 30 June 2023
Individual tax residency	TR 2023/1 provides the Commissioner's final guidance to individuals to enable them to self-assess their residency status

Key ATO guidance

Topic	ATO public advice and guidance (PAG)
Use of an individual's image	• Draft TD 2022/D3 sets out the Commissioner's proposed view on how s 6-5 of the ITAA 1997 applies to arrangements where an individual with fame establishes a connected entity and enters into an agreement with that entity granting it non-exclusive use of their name, image etc. • Will update the view previously expressed in draft PCG 2017/D11 (withdrawn on 24 August 2018)
Meaning of employee for PAYG withholding purposes	Draft TR 2022/D3 replaces TR 2005/16W and explains the Commissioner's approach in applying the HCA decisions in *Construction, Forestry, Maritime, Mining and Energy Union v Personnel Contracting Pty Ltd* [2022] HCA 1 and *ZG Operations Australia Pty Ltd v Jamsek* [2022] HCA 2 to the definition of 'employee' for the purposes of s 12-35 of Schedule 1 to the TAA Should be read in conjunction with Draft PCG 2022/D5 *Classifying workers as employees or independent contractors – ATO compliance approach*
Vacant land	Draft TR 2021/D5 provides the Commissioner's view on the application of s 26-102 of the ITAA 1997

Closing comments & Questions

Abbreviations

Abbreviation	Explanation
APRA	Australian Prudential Regulation Authority
ATO	Australian Taxation Office
BA | BAE	Balancing adjustment | Balancing adjustment event
CGT	Capital gains tax
CPD	Continuing Professional Development
Division 7A	Division 7A of Part III of the ITAA 1936
DSP	Digital Service Provider

Abbreviations

Abbreviation	Explanation
FBT	Fringe benefits tax
FHSSS	Family Home Super Saver Scheme
FTDT	Family trust distribution tax
FTE | IEE	Family trust election | Interposed entity election
FTL	Failure to lodge (penalty)
GDP	Gross domestic product
GST	Goods and services tax

Abbreviations

Abbreviation	Explanation
IAWO	Instant asset write-off | s 328-180 (and immediate deduction under s 40-82) of the ITAA 1997
IRFU	Installed ready for use
LCR	Law Companion Ruling
MFA | 2FA	Multi-factor authentication | Two-factor authentication
MYR	Minimum yearly repayment
NALI | NALE	Non-arm’s length income | Non-arm’s length expenditure
OFCD	Ordinary family or commercial dealing

Abbreviations

Abbreviation	Explanation
OSfA	Online services for agents
PAYG	Pay as you go
PCG | PS LA	Practice Compliance Guideline | Practice Statement Law Administration
PE	Present entitlement
RA	Reimbursement agreement (section 100A of the ITAA 1936)
SBE	Small business entity | s 328-110 of the ITAA 1997
SBSCH	Small business superannuation clearing house

Abbreviations

Abbreviation	Explanation
SG | SGC	Superannuation guarantee | Superannuation guarantee charge
SMSF	Self-managed superannuation fund
TBC	Transfer balance cap
TFE	Temporary full expensing | Subdivision 40-BB and s 328-181 of the IT(TP)A
TFN	Tax file number
TPAR	Taxable payment annual report
TPB	Tax Practitioners Board

Abbreviations

Abbreviation	Explanation
TPP	Taxable purpose proportion
TR | TD	Taxation Ruling | Taxation Determination
TSB	Total superannuation balance
TTI	The Tax Institute
TV | AV	Termination value | Adjustable value
UPE	Unpaid present entitlement
WFH	Working from home

Abbreviations

Abbreviation	Full title of Act
ITAA 1936	*Income Tax Assessment Act 1936*
ITAA 1997	*Income Tax Assessment Act 1997*
IT(TP)A	*Income Tax (Transitional Provisions) Act 1997*
TASA	*Tax Agent Services Act 2009*

Presenter

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Robyn Jacobson, CTA is the Senior Advocate at The Tax Institute.

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Robyn is a Chartered Tax Adviser of The Tax Institute, a Fellow of both Chartered Accountants Australia and New Zealand and CPA Australia, and a registered tax agent.

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The Tax Institute

Upcoming Events

[Local Tax Club]

27 July 2023

Leonda by the Yarra

The scope of Section 99B and implications for Australian beneficiaries

The Tax Summit

5–7 September

Melbourne Convention and Exhibition Centre

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