

Client Information Bulletin



May 2022



CONTENTS

- 1 What is new?
- 2 Tax Losses
- 3 Changing loss carry back choice
- 4 Using business money for private purposes
- 5 Check your business' PAYG instalments
- 6 Digital record keeping
- 7 Don't get burned by the phoenix
- 8 Employee or independent contractor?
- 9 FBT issues
- 10 Key tax dates

1. What is new?

Changes approved by Parliament

The following changes are now law:

- the extension of temporary full expensing (for depreciating assets) by 12 months to 30 June 2023 — so your business will be able to claim an outright deduction for the cost of depreciating assets you acquire (and install ready for use) before 1 July 2023 (this includes second hand assets if your business has an aggregated turnover of less than \$50 million);
- the extension of the loss carry back for companies to include the 2022–23 income year (a loss can be carried back as far as 2018–19);
- a change to the taxation of employee share scheme interests subject to deferred taxation;
- removing the Superannuation Guarantee \$450 monthly income threshold (from 1 July 2022).

Deduction for COVID-19 tests

- The Government has announced that legislation will be introduced to make it clear that work-related COVID-19 test expenses incurred by individuals will be tax deductible. This will include Polymerase Chain Reaction ('PCR') tests and Rapid Antigen Tests ('RATs').
- If you provide COVID-19 testing to your employees, FBT will not be payable.



2. Tax Losses

Before you claim a tax loss, make sure you have correctly claimed expenses that you are entitled to. Overclaiming expenses can put your business in an incorrect tax loss situation.

Keeping accurate and complete records will help you keep track of your tax losses. It can help you avoid incorrectly carrying back a tax loss or carrying forward tax losses to deduct in future years.

If your business makes a tax loss in the current year, you can generally carry forward that loss and claim a deduction for your business in a future year (subject to satisfying either the continuity of ownership or the business continuity test).

Companies and entities taxed as companies (e.g. corporate limited partnerships) may be able to claim the loss carry back tax offset. You can carry back losses made in the 2019–20, 2020–21, 2021–22 and 2022–23 income years to an earlier income year (but no further back than 2018-19) and claim an income tax offset in the company's 2021, 2022 or 2023 income tax return.

If you're carrying on a non-commercial business activity as an individual, either alone or in a partnership, and your business makes a loss, you must check to see how the non-commercial loss rules apply to you.

Tip! Talk to your Blaze Acumen tax adviser about how to best utilise a tax loss.



3. Changing loss carry back choice

If your company has chosen to carry back a loss from one year to an earlier year (but not before 2018–19), it may want to change how much of the tax loss it carries back. This needs to be done on the approved ATO form and within the time limit for amending the relevant tax assessment.

The change will take effect from the day your company made the original loss carry back choice.

The ATO provides this example.

XYZ Co made a loss carry back choice in its Company tax return 2021 to carry back \$5,000 of the \$10,000 tax loss it made in that income year to the 2019–20 income year. Later it decides that it wants to carry back all the \$10,000 tax loss to the 2019–20 income year.

XYZ Co notifies the ATO of its change in loss carry back choice using the approved form within the time limit for amending its tax assessment for the 2020–21 income year.

The time limit for amending an assessment is generally 2 years if your company is a small business entity (aggregated turnover of less than \$10 million) or, if the income year starts on or after 1 July 2021, a medium business (aggregated turnover of less than \$50 million). Otherwise the time limit is generally 4 years.

For a company balancing at 30 June, the first income year starting on 1 July 2021 is the 2021–22 income year.



4. Using business money for private purposes

There may be tax consequences if you take or use money or assets from your company or trust for private purposes.

For example, it is quite common for the company or trust to make a loan to a shareholder or an associate of a shareholder (e.g. the shareholder's spouse or child). When a company lends money or assets to a shareholder, the shareholder may be taken to have received a Division 7A deemed dividend if certain conditions are not met.

If this happens, the shareholder will need to report an unfranked dividend in their individual tax return. A deemed dividend has no impact on the company's balance sheet or income tax return.

To avoid a Division 7A deemed dividend, before the company tax return is due or lodged (whichever comes first), the loan must:

- be repaid in full; or
- put on Division 7A complying terms.

To put a loan on Division 7A complying terms, the loan must:

- be in a written agreement and signed and dated by the lender;
- have an interest rate for each year of the loan that at least equals the benchmark interest rate (4.52% for 2021–22);
- not exceed the maximum term of 7 years, or 25 years in certain circumstances when the loan is secured by a registered mortgage over real property.

The company must include any interest earned from the loan in its tax return.

You (the shareholder or associate of the shareholder):

- must make the minimum yearly repayment each year (the ATO publishes a Division 7A calculator to work this out);
- cannot borrow money from the company to make the minimum yearly repayment;
- can make payments on the loan using a dividend declared by the company. This dividend must still be reported in your individual tax return as assessable income.

It is important to keep accurate records of any such transactions and ensure they are reported correctly for tax purposes. This may require a transaction to be reported in both the company's or trust's tax return and your individual tax return.

Unpaid present entitlement

An unpaid present entitlement (**UPE**) arises where a beneficiary of a trust is presently entitled to a share of trust income but it remains unpaid. If the beneficiary is a private company and the trust is a shareholder in the company (or an associate of a shareholder), the ATO considers that the unpaid amount is a loan from the company to the shareholder (or associate) and therefore subject to the operation of Division 7A.

The ATO has recently issued a draft taxation determination, revising its views on the application of Division 7A where there is a UPE for arrangements arising on or after 1 July 2022. For example, the ATO now considers that Division 7A may apply where a private company beneficiary has knowledge of a UPE and does not demand payment of that amount.

Tip! Division 7A is very complex – particularly the UPE rules – so talk to your Blaze Acumen tax adviser to make sure you don't take steps that result in a Division 7A deemed dividend.



5. Check your business' PAYG instalments

Now is a good time to check that your business' PAYG instalments still reflect its expected end of year income tax liability.

If the business' circumstances have changed and you think it will pay too much (or too little) in instalments for the year, the instalments can be varied on the next activity statement.

Instalments can be varied multiple times throughout the year. The varied amount or rate will apply for the remaining instalments for the tax year or until another variation is made.

If your business is affected by COVID-19 or a natural disaster, the ATO has said it will not apply penalties or charge interest to varied instalments if the business has made its best attempt to estimate its end of year income tax liability.

If an amount or rate is varied online, paper activity statements and instalment notices will no longer be issued. These will be issued electronically. Your business will need to consider this when deciding how to lodge, revise and vary future activity statements and instalment amounts.

Tip! Your Blaze Acumen tax adviser can help you with your business' activity statements and tax returns.



6. Digital record keeping

The ATO has highlighted the advantages of keeping business records digitally. If, for example, your business uses a commercially-available software package, it may help the business:

- keep track of business income, expenses and assets as well as calculate depreciation;
- streamline its accounting practices and save time so you can focus on the business;
- automatically calculate wages, tax, superannuation and other amounts for activity statement and other purposes;
- meet Single Touch Payroll (**STP**) reporting obligations;
- back up records using cloud storage to keep records safe from flood, fire or theft.

Digital storage of paper records

Paper records (or hard copies) can be stored digitally. The ATO accepts images of business paper records saved on a digital storage medium, provided the digital copies are true and clear reproductions of the original paper records and meet its five rules for record-keeping.

Once an image of the original paper records is saved, there is no need to keep the paper records unless required by a particular law or regulation.

However, if information (for example, supplier information, date, amount and GST) is entered into accounting software from digital or paper records, the business may still need to keep a copy of the actual record, either digitally or on paper. Some accounting software packages may do both accounting and record keeping.

The ATO website gives tips on how to choose suitable record-keeping software.

Providing the ATO with copies of records

If the ATO asks to see copies of records that are kept digitally, you can provide either digital or printed copies. The ATO may also request documentation about the record-keeping system (for example, information about regular back-up and record destruction procedures) or ask for paper copies.

Cloud storage

If your business uses cloud storage, either through accounting software or a separate service provider, for example, Google Drive, Microsoft OneDrive or Dropbox, you should ensure:

- the record storage meets the record-keeping requirements;
- you download a complete copy of any records stored in the cloud before you change software provider and lose access to them.

eInvoicing storage

Regardless of your business' eInvoicing software or system, you are responsible for determining the best option for storing business transaction data. You should:

- ensure that the process meets the record-keeping requirements
- discuss the options with your software provider
- talk to your business adviser, if necessary.



7. Don't get burned by the phoenix

The ATO has warned small businesses about phoenixing. That happens when (to quote the ATO) a 'dodgy' business shuts down to avoid paying its debts, but then pops up under a different company name without any debt.

The ATO is working, through the Phoenix Taskforce, with other federal, state and territory agencies to detect, deter and disrupt illegal phoenix businesses.

Here are 5 red flags to look out for when working with a company:

- unusually low quotes or tenders can suggest that the company isn't taking superannuation or PAYG instalments into account;
- the company directors have previously been involved with liquidated entities;
- the company's name and directors have changed, but the manager and staff remain the same;
- the company is requesting payments to a new company;
- you're told that your last contract won't be paid unless you sign a new contract, often with a different company name from the one you first dealt with.

If you suspect illegal phoenix activity, you can contact the ATO by phoning **1800 060 062** or by emailing phoenixreferrals@ato.gov.au.



8. Employee or independent contractor?

It is an age old question. Is the individual providing services to your business an employee or an independent contractor?

The High Court recently considered this issue in two separate cases and agreed in both that it is the ‘totality of the relationship between the parties’ that should be considered. However, instead of adopting a ‘multifactorial’ approach, considering factors such as the degree of control, who bears the commercial risk and who provides the equipment, the High Court focused on the contractual relationship between the parties.

This is not the place to analyse the High Court’s decisions in detail. However, it is worth noting that the High Court observed that where the terms of the parties’ relationship are comprehensively committed to a written contract (that is not a sham), the terms of the contract should determine the character of the relationship. On that basis, the High Court held that the relevant individuals were employees in one case (CFMEU v Personnel Contracting), but not in the other (ZG Operations v Jamsek).

These cases are relevant for tax (e.g. PAYG withholding obligations) and the Superannuation Guarantee (SG) scheme. Of course, the SG picture is complicated by rules treating certain individuals as employees for SG purposes, even if they are not employees at common law.

Tip! Talk to your Blaze Acumen tax adviser if you have any concerns about the status of your relationship with individuals who provide services to your business.



9. FBT issues

FBT return time

The 2022 Fringe benefits tax (**FBT**) year ended on 31 March 2022, so it's a good time to start considering what you need to do to lodge your business' FBT return and pay FBT.

You'll need to work out if the business has an FBT liability for any fringe benefits provided to employees (or their associates) between 1 April 2021 and 31 March 2022. An associate includes a spouse, child, parent, sibling and most other relatives (but not cousins).

If your business has an FBT liability for the 2022 FBT year, the FBT return and payment is due by 23 May 2022. This date applies as the statutory due date of 21 May falls on a weekend this year. The due date may differ if your business uses a tax agent.

If your business does not have an FBT liability, and it is registered for FBT, you still need to inform the ATO. You can do this by completing a *Notice of non-lodgment – Fringe benefits tax* form by the date your return would have been due.

Don't forget to keep all records relating to the fringe benefits that have been provided, including how the taxable value of the benefits was calculated.

Tip! If your business provides fringe benefits to employees (or their associates), your Blaze Acumen tax adviser can help you prepare your FBT return and work out if you have an FBT liability.

FBT thresholds and rates for 2022–23

The 2022–23 FBT thresholds are as follows:

- the statutory (or benchmark) interest rate (e.g. for loan fringe benefits) — 4.52% for 2022–23 (the same as for 2021–22); and
- the record keeping exemption (also relevant for eligibility to use the base rate method to calculate FBT) — \$9,181 for 2022–23 (up from \$8,923 for 2021–22).

Taxation determinations were issued specifying:

- the cents per kilometre rates for motor vehicles (other than a car) TD 2022/3; and
- the reasonable food and drink amounts for employees living away from home TD 2022/2.

The car parking threshold for the 2022–23 FBT year can be calculated once the All Groups CPI number (weighted average of the eight capital cities) for March this year is available.



10. Key tax dates

Date	Obligation
16 May 2022	2021 Company and Super Fund Tax Returns due (unless concession applies)
16 May 2022	2021 Individual, Partnership & Trust Tax Returns due (unless concession applies)
23 May 2022	April 2022 monthly BAS due 2021-22 FBT return due
30 May 2022	March 2022 SG charge statement due (if required)
7 June 2022	2021 Company and Super Fund Tax Returns eligible for concessional due date*
7 June 2022	2021 Individual, Partnership & Trust Tax Returns eligible for the concessional due date**
21 June 2022	May 2022 monthly BAS due
27 June 2022	2022 FBT Return due (lodged via Tax agent)
21 July 2022	June 2022 monthly BAS due
28 July 2022	June 2022 quarterly BAS due Pay June 2022 quarterly PAYG instalment Employee Superannuation Guarantee contributions due

* To be eligible for the concessional due date the Company or Super fund must have been non-taxable or received a credit assessment in the latest year lodged and are non-taxable or receiving a credit assessment in the current year.

** All Individual, Partnership and Trust Tax Returns are eligible for the concessional due date provided that any payment required is also made by this date.

DISCLAIMER

The content of this newsletter does not constitute specific advice. Readers are encouraged to consult their Blaze Acumen tax adviser for advice on specific matters.