StewartBrown

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# Client Newsletter

Year End Tax Planning Checklist
For the year ending 30 June 2021

For the information of clients we enclose this checklist which you may find helpful in planning your year-end tax strategies. Careful planning (and in many cases timing) is even more important this year. Please contact your StewartBrown Manager or Partner should you need any assistance with understanding or applying the below.

## *OVERVIEW*

Here's a quick summary of what you need to consider for yourself and your business before the end of the financial year:

- **Company tax rate to reduce from 26% to 25% on 1 July 2021 (Base rate entities only).** See 2(A) below.
- **Improved and expanded asset write-off incentives.** See 2(B) below and annexure.
- **Superannuation Guarantee charge to increase from 9.5% to 10% on 1 July 2021.** See 19(B) below.
- **Singe Touch Payroll ("STP") now compulsory for all employers.** Employers need to ensure their systems are ready and compliant to report using STP. Contact your StewartBrown Manager or Partner for assistance with this if necessary.
- **Trustees of discretionary trusts.** You are required to document your annual distribution decision before 30 June.
- **Personal tax rates.** See 3 below for current personal tax rates.
- **Superannuation.** Changes to some age based tests and concessional and non-concessional contribution cap limits. Ensure minimum pension amounts have been withdrawn before 30 June. See 1 below for further details.
- **Loss carry back measures**. Companies can now carry-back losses into prior years. See full details at 14 below.
- **Small business concessions for medium businesses**. From 1 July 2020 eligibility conditions for some tax concessions have been relaxed. See 2(D) below.

### (1) SUPERANNUATION

Listed below are some of the key areas that you may need to consider this year-end, both in planning for the rest of 2021 and looking forward into 2022 and beyond:-

- From 1 July 2021 the annual concessional and non-concessional contribution caps rise from $25,000 to $27,500 and from $100,000 to $110,000 respectively.
- A $1.6m pension transfer balance cap applies per member and the earnings therefrom will continue to be tax free, however earnings on funds in excess of the $1.6 million cap will be subject to tax at 15% (if retained in superannuation). This cap increases to $1.7m form 1 July 2021.
- Fund earnings attributable to Transition to Retirement Income Streams ("TRIS") are taxed at 15% rather than being tax free (which has been the rule since 1 July 2007).
- Individuals are able to save for their first home deposit by making voluntary contributions into their super fund of up to $15,000 per year (max. of $30,000 in total). Contributions and deemed earnings can then be withdrawn (from 1 July 2018) for a first home deposit.
- A person aged 65 or over can make a "Downsizer" contribution into their super fund of up to $300,000 from the proceeds of selling their home (a couple can therefore contribute $600k into super). These contributions

are not subject to the normal contribution limits described below. Certain conditions apply and you should check with us to see if this is suitable for you.

- The “work test” still applies to some contributions. To meet the work test, you must be gainfully employed for at least 40 hours during a consecutive 30-day period in the financial year in which the contributions are made. This is an annual test. This means once you meet this test you can make contributions for the entire financial year. Gainfully employed means employed or self-employed for gain or reward in any business, trade, profession, vocation, calling, occupation or employment. The work test only applies to those people aged 67 or older.
- Bring forward concessions still apply allowing you to utilise previously unused contribution caps going back in some cases up to three years. See further details below at 19 (C) and (F).

The tax rate for complying superannuation funds in accumulation phase remains at 15%. Superannuation funds in pension phase will continue to be tax free (subject to the $1.6m cap mentioned above).

The superannuation rules are complex so we encourage you to call your StewartBrown Manager or Partner if you have any questions or concerns.

## (2) BUSINESS TAXES

### (A) *Tax Rates*

The standard company tax rate for the 2021 year is 30%, however a lower company tax rate of 26% applies to ‘base rate entities’ (“BRE”s – see below). In 2021/22 a tax rate of 25% will apply to BRE’s.

A company is a BRE and qualifies for the lower company tax rate for an income year if both of the following apply:

- no more than 80% of the company’s assessable income for that income year is base rate entity passive income – see below; and
- the aggregated turnover of the company for the income year is less than the aggregated turnover threshold for that income year. This threshold for the 2021 and 2022 financial years is $50 million.

What is base rate entity passive income? An amount of income is base rate entity passive income of a company if it is:-

- Dividends other than non-portfolio dividends
- Franking credits attached to such a distribution
- A non-share dividend made by a company
- Interest income
- A royalty
- Rent
- A gain on a qualifying security
- A net capital gain
- Certain trust and partnership distributions

One other point to note with these different corporate tax rates is that a company’s imputation or franking credits might not always match up with the corporate tax rate being paid. Please speak with your StewartBrown Manager or Partner for further advice in this area.

### (B) *Plant and Equipment*

A number of major initiatives have been introduced to stimulate economic activity since the COVID-19 pandemic struck, with many being aimed at encouraging businesses to purchase new plant and equipment. Temporary full expensing, Instant Asset Write-offs and Backing Business Investment programs are the major programs being used by the Federal Government in this area. Each of these programs has its own qualifying criteria, thresholds and periods of application.

In most instances assets purchased for up to $150,000 can be claimed as an immediate tax deduction.

Please refer to the attached annexure "*Economic stimulus measures-Interaction of tax depreciation incentives*" published by the ATO as a guide to these measures. For more specific and tailored advice please contact your StewartBrown Manager or Partner.

**(C) *Obsolete equipment***
In order to write-off obsolete plant and equipment in the 2021 financial year and crystallise a tax deduction for the written down value, the assets must be physically scrapped or disposed of prior to 30 June 2021.

**(D) *Extension of small business concessions to medium businesses***
From 1 July 2020 eligible businesses can immediately deduct certain start up expenses and certain prepaid expenditure. Previously turnover had to be below $10m to be eligible for these concessions. This has now been raised to $50m.

## (3) PERSONAL INCOME TAXES

The following tax rates apply to individuals who are residents of Australia for tax purposes:-

| Tax rates 2020 – 2021 (rates apply to 30/06/2024) | |
|---|---|
| **Taxable income** | **Tax on this income** |
| **$0 - $18,200** | Nil |
| **$18,201 - $45,000** | 19c for each $1 over $18,200 |
| **$45,001 – $120,000** | $5,092<br>*plus* 32.5c for each $1 over $45,000 |
| **$120,001 – $180,000** | $29,467<br>*plus* 37c for each $1 over $120,000 |
| **$180,001 and over** | $51,667<br>*plus* 45c for each $1 over $180,000 |

The above rates do not include the Medicare levy of 2.0%, nor the additional 1.5% Medicare levy surcharge applying to higher income earners without private patient hospital cover.

If your taxable income is less than $66,667 you will receive the low income tax offset. The maximum offset is $700 if your taxable income is $37,500 or less. The offset is reduced for every dollar of taxable income over $37,500.
In addition, those taxpayers earning under $126,000 may also be entitled to a low and middle income tax offset of up to $1,080. This offset phases out by 3 cents for every dollar of income above $90,000.

## (4) PROPERTY INVESTORS

We remind you of changes affecting property investors over recent years:

- Investors who purchase plant and equipment for their residential investment property after 9 May 2017 will be able to claim a deduction over the effective life of that asset. However, subsequent owners of that property will be unable to claim deductions for plant and equipment items purchased by a previous owner. Acquisitions of existing plant and equipment items will be reflected in the cost base for CGT purposes for subsequent investors.
- From 1 July 2017 you will not be entitled to claim deductions for travel expenses related to inspecting, maintaining or collecting rent for a residential rental property.

- Individuals, trusts and Self-Managed Super Funds cannot claim holding costs (such as borrowing costs, interest, Council rates, land taxes etc) incurred over vacant land from 1 July 2019 onwards.

### (5) FOREIGN INVESTORS

Measures impacting foreign residents and their investments in Australia:

- Foreign owners of residential property are required to pay an annual vacancy fees where the property is not occupied or genuinely available on the rental market for at least 6 months per year.
- A 50% cap applies to foreign ownership in new developments through a condition on New Dwelling Exemption Certificates.
- The CGT withholding rate in relation to property disposals by foreign tax residents is 12.5%. This is a non final with-holding tax and will be applied as a credit against any tax payable on lodgement of the taxpayer's respective income tax return(s).
- The CGT withholding threshold for foreign tax residents is **$750,000.**

NSW taxes on Non Residents
In addition to the above, "foreign persons" (as defined under NSW State legislation) can face up to an additional 8% of stamp duty when they acquire real estate in NSW and will also face a land tax surcharge (in addition to the usual land tax) of 2% of the value of the property. Importantly, these additional land taxes and stamp duties can apply to an Australian Trust where the Deed for the Trust allows for a beneficiary to be a foreign person.

**If you have a trust that owns property in Australia** and one or more of your beneficiaries are currently (or are proposing to become) non residents we urge you to **review your Trust Deed** to avoid being caught by these additional taxes. If not done so already, please contact your StewartBrown Manager or Partner to have your Trust Deed reviewed ASAP.

## *GENERAL YEAR-END TAX STRATEGIES*

### (6) DEFER INCOME

Certain income is only taxed on receipt and, accordingly, it is sometimes possible to arrange for this type of income to mature or be received after 30 June 2021 rather than before. Examples include rent, interest and dividends.

Certain other business income is only assessable when the taxpayer has a legal right to sue for recovery of the debt and, accordingly, it may be appropriate to defer the completion of certain transactions until after 30 June 2021. Examples include:-

- Defer until July the completion of high profit transactions (e.g. signing of licensing agreements, royalty contracts, delivery of major product installations, etc.).
- Defer the completion of work in progress until July so that invoicing will be raised in the 2022 year.

### (7) ACCELERATE DEDUCTIONS

Generally, businesses are able to claim income tax deductions for expenses incurred or paid prior to the end of the financial year (subject to the prepayment restrictions outlined in Item 13). Thus, to obtain an income tax deduction in the 2021 financial year it may be appropriate to accelerate and incur certain regular expenses in June 2021 rather than in July or August (e.g. the service or repair of an item of equipment in June rather than in July).

In addition for Base Rate Entities (see note 2 (A) above) there is a tax advantage in claiming expenses in the 2021 financial year as the company tax rate for those entities is reducing as of 1 July 2021.

## (8) BAD DEBTS

Review your trade debtors and identify any bad debts that should be written-off. A bad debt will be deductible in the 2021 financial year provided the following tests are satisfied:-

- The debt must exist;
- The debt must be actually "bad" before writing it off;
- The debt must be physically written off prior to 30 June 2021;
- The debt must have been brought to account as income;
- A company writing-off a bad debt must satisfy the continuity of ownership test or same business test; and
- A discretionary trust writing-off a bad debt must have made a “Family Trust Election”.

If you write-off a bad debt remember to claim back the relevant GST in your next BAS return (GST accrued basis only).

## (9) SALARY SACRIFICE PAYMENTS (Including Superannuation and Fringe Benefits)

Where an employee has the option to direct any bonus entitlement or other earnings into a superannuation fund (i.e. salary sacrifice super contribution) the employer must ensure that the request is made in writing prior to the amounts being earned by the employee. Please note that employees who intend to salary package fringe benefits and whose taxable income is less than $180,000 should review their arrangements as the changes in the tax rates over recent years could impact on the tax-effectiveness of such arrangements.

## (10) STAFF BONUSES

For accrued staff bonuses to be deductible in the 2021 tax year the decision to pay the bonus and the determination of the bonus must be made and documented prior to 30 June 2021. If the above decisions are made after year-end, when the actual operating results have been determined, the bonuses will not be deductible until the 2022 tax year. Similar tests must be satisfied for accrued director’s fees to be deductible.

## (11) DONATIONS

For donations to be deductible in the 2021 tax year they must be for $2 or more prior to 30 June 2021 (i.e. cheque, EFT or BPAY cleared through the bank account by 30 June 2021). Examples of donations that are deductible include those made to an authorised deductible gift recipient or political party (capped at $1,500). The tax deduction is limited to the available taxable income (i.e. donations cannot be used to generate or increase the amount of tax losses to be carried forward to a subsequent year). Accordingly, if your business is likely to make a tax loss, it may be to your advantage to make donations personally so as to ensure a full tax deduction. In addition, for individuals wishing to make tax deductible donations we suggest that they be made by the taxpayer on the highest marginal tax rate.

## (12) PREPAYMENTS

Most taxpayers are not entitled to claim a deduction in the 2021 tax year for any part of a prepayment that relates to the period after 30 June 2021. Certain expenditure is excluded from this rule, as follows:-

- Where the payment amount is less than $1,000 (excluding GST);
- Amounts required by law or an order of the court (e.g. workers’ compensation premiums, land tax, etc.);
- Under a contract of service (e.g. salary or wages);
- Where the payment relates to non-business expenditure made by an individual taxpayer (e.g. interest on rental property); and
- Where the payment is made by a taxpayer who qualifies as a Small Business Entity (SBE).

Taxpayers who qualify as a SBE (i.e. under $50 million turnover, (was $10m last year)) or individuals with non-business expenditure (e.g. investments, property, etc.) are able to claim prepayments where the period of service does not exceed 12 months and the period of service ends in the next tax year (i.e. before 30 June 2022).

**Warning to Businesses other than Small Business Entities (SBE)**
Businesses need to carefully identify all expenses exceeding $1,000 (excluding GST) paid in advance. This will include prepayments made throughout the financial year not just in June. For example, annual insurance premiums paid in December covering the calendar year (i.e. January to December) will be "caught" by these prepayment restrictions.

## (13) FOREIGN EXCHANGE LOSSES

Consideration should be given to accelerating the realisation of unrealised foreign exchange revenue or capital losses before 30 June 2021. Such unrealised losses could be realised by the payment of an overseas liability, thus crystallising the loss before year-end. Foreign losses continue to be deductible against domestic income.

## (14) TAX LOSS SITUATIONS

Where your business entity is likely to be running at a tax loss, there may not be any tax benefit in accelerating tax deductions or deferring revenue in the current year. Again, as the tax deductibility of donations is wasted in a tax loss situation it may be more beneficial for donations to be made personally.

Carrying back company losses.
As a temporary measure, companies with aggregated turnover of less than $5 billion are able to:

- carry back losses from the 2019-20, 2020-21 and 2021-22 income years
- offset previously taxed profits in the 2018-19, 2019-20 and 2020-21 income years.

Under this measure tax losses can be applied against taxed profits in a previous year, generating a refundable tax offset in the year in which the loss is made. The amount of the refundable tax offset available to the company is based on the entity's tax rate in the loss year. The amount carried back can be no more than the earlier taxed profits, limiting the refund by the company's tax liabilities in the profit years. Further, the carry back cannot generate a franking account deficit meaning that the refund is further limited by the company's franking account balance at the end of the year for which the refundable tax offset is claimed (2020-21 or 2021-22 income year).

The tax refund will be available on election by eligible businesses when they lodge their 2020-21 and 2021-22 tax returns. Companies will be allowed to carry back tax losses for the 2019-20 income year, but these claims will be processed when income tax returns for the 2020-21 income year and the 2021-22 income year are lodged. Companies that do not elect to carry back losses can still carry losses forward as normal. The temporary loss carry-back rules will cease to apply after the 2021-22 income year.

## (15) RESEARCH & DEVELOPMENT EXPENDITURE

Expenditure by a company (with turnover of less than $20m) on eligible R&D Projects will be entitled to the R&D tax incentive being a refundable tax off-set of 43.5% of the eligible expenditure. To maximise the eligible expenditure for the year ended 30 June 2021, payments to related parties should be paid by 30 June (not just accrued) and superannuation attributable to R&D projects should also be paid prior to 30 June 2021. For taxpayers with a turnover greater than $20m, a 38.5% non-refundable tax offset may be available.

From 1 July 2021, companies with turnover of less than $20m will be entitled to the refundable tax offset at a rate of 18.5% above the claimant company tax rate. Companies with turnovers in excess of $20m will be entitled to an offset equivalent to their company tax rate plus one or more marginal intensity premiums. An explanation of these marginal intensity premiums is outside the scope of this paper and we would refer you to your StewartBrown Manager or Partner for further details regarding those.

## (16) TRADING STOCK & WORK IN PROGRESS

Factors to consider in respect of trading stock at year-end include:-

**(A) *Stocktake***

On the last day of trading of the financial year a physical count of all trading stock and work in progress should be undertaken and recorded (unless you have a reliable stock control system in place). Please note that a Small Business Entity (SBE) is not required to undertake a stock count of closing stock where the difference between the value of opening trading stock at the beginning of the year and closing stock is estimated to be $5,000 or less. In these cases the SBE can elect not to do a stocktake but simply assume the closing stock is the same value as the opening stock.

**(B) *Valuation***

For income tax purposes trading stock (including work in progress) may be valued at cost price, market selling value or replacement value. The appropriate choice of valuation of trading stock will depend on the business circumstances for the year. The most common method adopted is the lower of the three alternatives for each item of stock. The valuation method selected can have a significant effect on the calculation of the year's taxable income. Cost should include direct material, shipping, labour and other manufacturing costs (if applicable). In addition, wholesalers and retailers should include an allowance for warehousing and distribution costs.

**(C) *Obsolete Stock***

In order to write-off obsolete and worthless stock in the 2021 tax year it is necessary to either physically scrap the stock prior to 30 June 2021 or to identify such stock and set it aside for scrapping within a reasonable time after year-end.

## (17) CAPITAL GAINS TAX (CGT)

Where an asset is acquired on or after 19 September 1985, CGT may apply on its subsequent sale. **Please note that for CGT purposes the purchase or selling date is the date of entry into the contract, not the settlement date.** To defer or minimise CGT payable where a capital profit would arise you could:-

- Take advantage of the 50% discount for individuals and trusts or the 33.33% discount for superannuation funds, by not disposing of the asset within 12 months of purchase;
- Defer the sale of assets until the beginning of the next tax year (where lower tax rates may apply);
- Match capital gains against capital losses; and/or
- For individual taxpayers, consider deferring the sale of assets until you have a low income year.

Other CGT facts to consider are:-

- Capital losses can only be used to reduce Capital Gains (prior to applying the 50%/33.33% discount);
- Any unrecouped realised CGT losses in the name of an individual are lost or forfeited in the event of death, so it is prudent to utilise such CGT losses as soon as possible; and
- On the sale of a business it may be possible to benefit from the various CGT small business tax concessions.

## (18) REDUCING EFFECTIVE TAX RATE

Individual taxpayers may be able to reduce their effective tax rate by:-

- Levelling out income peaks and troughs to avoid higher tax brackets;
- Moving deductions and losses to a higher income spouse or business entity;
- Moving income and gains to a lower income spouse or business entity;
- Deferring retirement or roll-over benefits until after 30 June; or
- Realising capital gains in a low income year and/or realising capital losses to offset capital gains.

## *SUPERANNUATION*

### (19) SUPERANNUATION CONTRIBUTIONS – ACCUMULATION PHASE

The important aspects for tax deductibility of superannuation contributions are as follows:-

**(A) *Tax Deductible Contributions***
To be deductible in the 2021 year Superannuation contributions must be paid to a complying superannuation fund prior to 30 June 2021. The contribution payment must be cleared through the payer's bank account by 30 June 2021. We recommend making payments at least a week before the end of the financial year for this reason.

**(B) *Superannuation Guarantee Legislation***
In accordance with the Superannuation Guarantee (SG) legislation all employers must contribute at the specified contribution levels to a complying Superannuation Fund in respect of employees and also in respect of contractors who are individuals and who are providing predominantly services of labour. Such contributions are required to be paid within 28 days of the end of each quarter with the final payment in respect of the 2021 tax year due by 28 July 2021, otherwise Superannuation Guarantee Charge (SGC) is payable (which is not tax deductible).

All employers are urged to review their SG obligations and to pay the necessary superannuation contributions by 30 June 2021 (if a deduction is required in the 2021 year) and certainly by 28 July 2021 so as to avoid the SGC. The SG rate payable by all employers for the 2021 year is 9.5% of the employees' ordinary time earnings.

The Superannuation Guarantee rate will increase to 10% from 1 July 2021 and further to 10.5% from 1 July 2022.

**(C) *Tax Deductible Contribution Caps***
The 2021 concessional (i.e. tax deductible) contribution caps for all individuals are detailed in Item 1. above. The annual contribution caps apply to the total contributions from all sources (including compulsory SG contributions) so it is very important to check that contributions are not made in excess of these caps as additional tax payable may be significant. **Remember the contribution cap is measured by reference to the amount received by the super fund each year not the amount recorded as an expense in the employer's wages records/financial accounts.**

From 1 July 2018, you are able to "carry forward" any unused amount of your concessional contributions cap. You will be able to access your unused concessional contributions cap on a rolling basis for five years. Amounts carried forward that have not been used after five years will expire. The first year in which you can access unused concessional contributions is 2019–20. You will only be able to carry-forward your unused concessional contributions cap if your total superannuation balance at the end of 30 June of the previous financial year is less than $500,000.

**(D) *Work Test***
The eligibility to make contributions to superannuation for those aged 67 and over (formerly 65) but less than 75 is subject to the member satisfying a "work test" whereby they must be gainfully employed or self-employed for at least 40 hours in a period of not more than 30 consecutive days during the financial year. The relevant fund's trust deed must also allow such contributions to be accepted. We strongly recommend that the "work test" be satisfied before making any contribution.

**(E) *Concessional Contributions Provided to High Income Earners (Division 293 Tax)***
Concessional superannuation contributions for high income earners are taxed effectively at the rate of 30% (rather than the standard 15%). A high income earner for this purpose is anyone who earns more than $250,000 of adjusted taxable income.

The Division 293 tax can be reduced or even eliminated if it is possible to reduce your adjusted taxable income to be below the $250,000 threshold or by deferring income to a future year (e.g. by deferring the payment of dividends).

**(F) *Non-Concessional Contributions***

The non-concessional contribution (i.e. non-tax deductible) caps for all individuals are detailed in Item 1. above. Individuals aged under 65 are still entitled to "bring forward" up to three years of non-concessional contributions but the amount that they can bring forward has changed. This is best explained in the following table:

| 1 July 2017 - 30 June 2021 | | After 1 July 2021 | |
|---|---|---|---|
| **Total Superannuation Balance (TSB)** | **Contribution and bring forward available** | **Total Superannuation Balance (TSB)** | **Contribution and bring forward available** |
| Less than $1.4m | $300,000 | Less than $1.48m | 3 years |
| $1.4m to less than $1.5m | $200,000 | $1.48m – $1.59m | 2 years |
| $1.5m to less than $1.6m | $100,000 | $1.59m – $1.7m | No bring-forward period |
| $1.6m and above | nil | Above $1.7m | N/A |

Inadvertent contributions in excess of the non-concessional cap, provided the correct procedure is followed, may be withdrawn from the super fund in accordance with a determination issued by the Commissioner. If not withdrawn penalty tax is applied.

***(G) Superannuation Choice – MySuper***

From 1 July 2005, employers making Superannuation Guarantee (SG) contributions are required to make a "choice of fund" offer to employees. If the employee has not elected a fund by the due date for payments of super, the employer must pay the contributions to the employer's "Default Fund", which now must be an approved "MySuper" Product. MySuper products have lower fees and documentation requirements.

***(H)* Co-*contributions Incentive***

The Government has a package of assistance whereby for eligible individuals the Government will contribute up to $0.50 for each $1.00 of member contribution. To be eligible the following requirements must be met, including:-

- Your personal non-concessional superannuation contribution must be made to your superannuation fund by 30 June 2021. We note that you cannot receive the Government's co-contribution for personal contributions claimed as a tax deduction (as these are concessional contribution);
- Your assessable income, reportable fringe benefits and reportable employer superannuation contributions must be less than $54,837 per annum;
- 10% or more of your total income for the year must be from employment and/or carrying on a business;
- You are under 71 years of age;
- You are a permanent resident of Australia; and
- You lodge an income tax return for the year.

The maximum benefit is a $500 co-contribution from the Government when an individual's assessable income including reportable fringe benefits is $39,837 or less and a personal contribution of $1,000 has been made. This benefit reduces on a sliding scale between the assessable incomes of $39,837 and $54,837. In addition, from 1 July 2017 your total superannuation balance must be less than $1.6m and you must not have exceeded your Non-Concessional Contribution Cap in the relevant financial year in order to qualify for this incentive.

***(I) Contributions for Spouse***

Individuals may be entitled to a tax offset for superannuation contributions made by them on behalf of a low income or non-working spouse. The maximum rebate available is $540 and is calculated at 18% of contributions up to a maximum of $3,000. The offset begins to phase out once the spouse's gross assessable income (before deductions), reportable fringe benefits and salary sacrifice superannuation contributions exceeds $37,000, and is fully phased out once it reaches $40,000.

## (20) SUPERANNUATION - PENSION PHASE

Where members have commenced a pension from their superannuation fund it is essential that they ensure the fund pays to them by 30 June 2021 at least the minimum amount of pension and not in excess of the maximum allowed. The minimum and maximum rate is applied to the value of the pension at commencement or, if started in a prior year, the market value of the pension at the beginning of the financial year. The maximum pension is 10% for a TRIS but otherwise there is no maximum.

In response to falling equity and other market values during the COVID-19 pandemic, the current minimum pension amounts payable for the 2021 and 2022 years have been halved, as follows:-

| Age | 2022 Minimum Pension % | 2021 Minimum Pension % | Usual Minimum Pension % |
|---|---|---|---|
| < 65 | 2.00% | 2.00% | 4.00% |
| 65-74 | 2.50% | 2.50% | 5.00% |
| 75-79 | 3.00% | 3.00% | 6.00% |
| 80-84 | 3.50% | 3.50% | 7.00% |
| 85-89 | 4.50% | 4.50% | 9.00% |
| 90-94 | 5.50% | 5.50% | 11.00% |
| >95 | 7.00% | 7.00% | 14.00% |

## *OTHER INFORMATION*

## (21) PRIVATE COMPANY LOANS (DIVISION 7A)

**(A) *Private company debit loans***

Borrowings by shareholders from their private companies are referred to as debit loans or Division 7A loans and extend to almost all types of payments or advances to shareholders and their associates (excluding loans to another company). Division 7A continues to apply to the use of company assets where inadequate consideration is paid to the company. Borrowings that do not satisfy the required exemption tests under Division 7A are deemed to be unfranked dividends and fully taxable in the recipient's hands. It is essential that private company directors ensure that any payments on behalf of shareholders or their associates are either repaid prior to the due date of lodgement of the company's tax return or that the borrowings are covered by a complying Division 7A loan agreement, the terms of which must be strictly complied with each year.

*Loans – Pre 4/12/97:* If you have a Pre 4/12/97 borrowing from your company, the terms of the loan must not be altered and the interest payable on the loan must be paid by 30 June 2021. In effect the loan should be quarantined and all future borrowings treated as separate loans. A strategy should be adopted to repay these loans.

*Loans – Post 4/12/97:* If you have a Post 4/12/97 borrowing from your company brought forward from last year, you must make the minimum annual repayment of capital and interest prior to 30 June 2021. If the minimum repayment is not made, the amount of any shortfall will be deemed to be an unfranked dividend if the company has retained or unrealised profits.

*Loans – Current Year:* If during the current year your company has made a payment to or on behalf of a shareholder or an associate creating a Division 7A loan, this loan will be deemed to be an unfranked taxable dividend in the hands of the recipient, unless the loan is repaid by the due date of lodgement of the company's tax return or alternatively is supported by a complying Division 7A loan agreement.

Unpaid Trust Distributions to Companies - Where a trust has distributed income to a corporate beneficiary after 16 December 2009 and the distribution remains unpaid, then this unpaid present entitlement could be treated as a loan for Division 7A purposes. We recommend that these unpaid present entitlements be paid or alternatively such amounts be treated as a Division 7A compliant loan by the time of lodgement of the trust tax return.

The relevant payments can be repaid by:-

- Charging the payment against a pre-existing credit loan account;
- The payment of wages (after PAYG tax and superannuation is paid);
- The payment of a fully franked dividend provided franking credits and retained profits are available; or
- Borrowing from another source to repay the debt.

Alternatively, if the payments are unable to be repaid by the due date of lodgement of the company's tax return, the payments for the year can be added together and treated as an "amalgamated" loan provided there is a written loan agreement which:-

- Is entered into prior to the due date of lodgement of the company's tax return;
- Stipulates a minimum interest rate (i.e. currently 4.52 % for the 2021 year; 5.37% for the 2020 year);
- Provides a maximum loan term (i.e. 7 years with no security and up to 25 years with registered mortgage security); and
- Requires a minimum annual repayment each year.

For your assistance we have available a sample of a standard loan facility agreement for use in documenting loan terms and conditions.

If a loan to a shareholder complies with the requirements of Division 7A it will not constitute a loan fringe benefit.

**(B)** ***Private company credit loans treated as equity where borrowing company turnover exceeds $20 million***
Where the borrowing company has a turnover in excess of $20 million, a related party credit loan will be treated as equity rather than debt unless commercial loan tests are satisfied. If the loan is treated as equity, payment of interest would be treated as a frankable distribution and not deductible.

## (22) PROFESSIONAL FIRMS & 'INCOME SPLITTING'

The ATO released a paper several years ago which effectively gave some guidance to Professional Firms (e.g. architectural, engineering, legal, accounting, medical practices, etc) of what is unacceptable income splitting (whereby income is distributed away from the professional worker who has generated the fee income).

The guidelines particularly targeted individual professional practitioners (IPP) earning income from a business structure. The ATO stated that IPPs will be rated as low risk and will not be subject to compliance action where their circumstances satisfy one of the three following tests:-

- Whether the IPP receives market rate remuneration from the business entity for their services. In determining market rate, the taxpayer may use the level of remuneration paid to the highest band of professional employees providing equivalent services to the firm or industry market-rate benchmarks; or
- Whether 50% or more of the income to which the IPP and their associated entities are collectively entitled (whether directly or indirectly through interposed entities) in the relevant year is assessable in the hands of the IPP; or
- Whether the IPP, and their associated entities, both have an effective tax rate of 30% or higher on the income received from the firm.

If the entity is unable to satisfy any of the three tests, the entity will be classified as high risk and may be potentially subject to an ATO review.

In December 2017 however the ATO stated that it was suspending these guidelines and would issue new ones by June 2018. Nothing was issued until earlier this year when the ATO published PCG 2021/D2 which now sets out the ATO's proposed revised compliance approach to the allocation of profits by professional firms. These new guidelines will apply from 1 July 2021. Firms which comply with the former, now superseded guidelines will not be penalised for following those for the 2021 financial year. We would encourage you to speak with your StewartBrown Manager or Partner if you have any questions concerning the new guidelines.

### (23) SERVICE ENTITIES

The ATO has issued guidelines for service entity arrangements. The guide “Your Service Entity Arrangements” (NAT 13086) and TR 2006/2 set out acceptable profit mark-ups in relation to services provided. It is essential that service entities review current mark-ups to ensure that they are within the reasonable guidelines and for appropriate adjustments to be made in the June BAS.

### (24) PERSONAL SERVICES BUSINESS

If your business entity (e.g. company, trust or partnership) derives all or part of its income from the personal services of an individual (i.e. hiring or contracting out your personal services) then you must determine whether the business entity satisfies the personal services business tests. If it fails these tests, the income generated from your personal services may be regarded as wholly that of the individual for tax purposes (rather than the business entity), and as such your business entity may be denied certain tax deductions that may have applied in prior years.

These tests include the following:-

- Results Test
- Unrelated Clients Test
- Employment Test
- Business Premises Test

If your business entity is earning personal services income you must determine whether you satisfy these tests. If you are in doubt please contact us as soon as possible and certainly **before you complete your June 2021 Business Activity Statement.**

Individuals in professional practice should also consider the notes in Point (22) above.

### (25) DISCRETIONARY TRUSTS

One of the benefits of discretionary trusts is the ability to stream different types of income to different beneficiaries, and in particular franked dividends and capital gains. This streaming of income provides significant flexibility and tax benefits between the beneficiaries (usually family members).

As in prior years and in accordance with the applicable Trust Deed, the trustee of a discretionary trust must resolve to distribute the income of the trust **by the earlier of the date specified in the Trust Deed (if any) or 30 June each year**. Historically, this was undertaken by the Trustees simply holding a meeting (often around the kitchen table) in the final week of June each year to resolve the distribution split between the beneficiaries. The resolution was then evidenced in a Trustee minute of the meeting which was prepared and signed at the same time as the tax return was drafted. In the view of the ATO this long standing practice is no longer adequate evidence of compliant resolutions.

The ATO has determined that distributions of trust income are to be evidenced as follows:-

- Where the Trustee is streaming franked dividends, the Trustee must not only pass a resolution distributing the income to the beneficiaries by 30 June but must also record (in that character) in the trust’s accounts or records by 30 June;
- Where the Trustee is streaming capital gains, the Trustee must not only pass a resolution distributing the income to the beneficiaries by 30 June but must also record (in that character) in the trust’s accounts or records no later than two months after the end of the financial year in which the distribution is made (i.e. 31 August);

- Where streaming is not undertaken it is sufficient for the Trustees to pass a resolution prior to 30 June and for it to be documented by a resolution minute post 30 June.

Trusts are under greater scrutiny from the ATO and we recommend all Trustees review their Trust Deeds (the rules of the Trust) to ensure the trust is conducted in accordance with the Deed, including to:-

- Check the vesting date
- Confirm the eligibility of the beneficiaries
- Clarify the definition of “income” and the availability of income streaming
- Check whether a “Family Trust Election” has been lodged or is required

## (26) CONTRACTOR TAX REPORTING SYSTEM

From 1 July 2012 a reporting system applies to those entities engaged in the building and construction industry and who engage contractors. You are considered to be in the building and construction industry if one of the following applied to you:

- 50% or more of your business income is derived from providing building and construction services
- 50% or more of your business activity relates to building and construction services
- If in the previous year, 50% or more of your business income was derived by providing building and construction services.

The reporting relates to actual amounts paid to contractors and needs to include identifying references such as the contractor’s ABN & address. The “Taxable Payments Annual Report” is required to be lodged with the ATO by 28 August 2021.

**Extension of reporting system**
This reporting system has been expanded from when it was first introduced to include contractors in many other allied industries. The table below sets out what businesses are now covered by this annual reporting requirement:

| Businesses |
|---|
| **Building & Construction services** |
| **Cleaning services** |
| **Courier services** |
| **Road freight services** |
| **Information Technology services** |
| **Security, Investigation and Surveillance services** |
| **Mixed services (one or more of the above)** |
| **Government entities** |

## (27) PAYROLL TAX – WARNING

The NSW Office of State Revenue continues to increase audit activity in relation to payroll tax. The annual wage threshold for NSW for the year ended 30 June 2021 is $1,200,000 (2022 will also be $1,200,000). The payroll threshold includes wages, superannuation, reportable fringe benefits, payments to employee contractors, and the wages and benefits of “grouped” or connected entities. You must register within seven days of exceeding the monthly wages threshold.

## (28) NON-COMMERCIAL LOSS PROVISIONS

When a loss from a business activity carried on by an individual or partnership occurs, consideration must be given to the non-commercial loss provisions as to whether the loss needs to be quarantined. There are concessions for taxpayers such as primary producers, artists, etc.

Many "genuine" business losses incurred by individuals continue to be quarantined for tax purposes where income exceeds $250,000 p.a. Income for the purpose of the test comprises the aggregate of taxable income, reportable superannuation contributions, net investment losses and reportable fringe benefits. The Commissioner may exercise his discretion where he considers that the deferral would be unreasonable and there is objective evidence that the activity is commercially viable. To seek this discretion an application for a private ruling and an evidentiary checklist must be lodged with the ATO.

# *FINANCIAL PLANNING & ESTATE PLANNING*

## STEWARTBROWN ADVISORY PTY LIMITED

For your information our financial planning division, namely StewartBrown Advisory Pty Limited, offers clients comprehensive advice on Self Managed Superannuation Funds, financial and retirement planning, and estate planning matters generally. Amanda Lee is the Director in charge of this division and is very experienced in providing appropriate and sound financial advice to clients. Amanda is now assisting many of our clients, however, if you have not met Amanda yet we invite you to contact us to arrange a complimentary meeting to discuss your situation and how Amanda and her team can assist you in achieving your financial goals in a tax effective manner.

To help you decide if financial planning advice could benefit you, please review the list below for some indicators:-

- Aged 56-75 – When to commence pensions? Contribution strategies?
- Close to retirement – Can you afford to retire? When is the right time? Should I take a voluntary redundancy?
- When will my superannuation run out - How much can I spend per year? How long will it last?
- Estate Planning – How is superannuation taxed on death? Can this be reduced? Can I gift money to my children now?
- Investment strategy – Do your current investments suit your needs, objectives and financial situation?
- Insurance – Are you comfortable that you are adequately insured? Are you over insured?
- Withdrawal and re-contribution strategies – How could this help you?

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# Economic stimulus measures

Australian Government
Australian Taxation Office

## Interaction of tax depreciation incentives

In 2020 the government introduced measures to help businesses recover from the impacts of the coronavirus pandemic (COVID-19). Eligible business entities may want to know which tax depreciation incentive is right for them. This information explains the depreciation incentives that are available and when businesses could consider using them.

| Temporary Full Expensing* | Instant Asset Write-Off – to 11 March 2020 | Instant Asset Write-Off – from 12 March 2020 | Backing Business Investment |
|---|---|---|---|
| ■ Allows **full write-off** for eligible assets first held at or after Budget Time 6 October 2020<br>■ 'Temporary' means it does not apply to assets first used or installed for taxable purposes after 30 June 2022<br>■ For asset eligibility and exclusion rules, see **temporary full expensing**<br><br>*As part of the Budget 2021–22, temporary full expensing is to be extended for another year. The measures announced as part of the Budget are not yet law. We will update this content once the extension is law. | ■ Allows **full write-off** for eligible assets costing **less than $30,000** if first acquired at or after Budget Time 2 April 2019*<br>■ Assets must have been first used or installed for a taxable purpose between 2 April 2019 and 11 March 2020<br>■ For asset eligibility and exclusion rules, see **instant asset write off**<br><br>*Budget Time 12 May 2015 for small business entities using simplified depreciation | ■ Allows **full write-off** for eligible assets costing **less than $150,000** if first acquired at or after Budget Time 2 April 2019* and on or before 31 December 2020<br>■ Assets must have been first used or installed for a taxable purpose between 12 March 2020 and 30 June 2021<br>■ For asset eligibility and exclusion rules, see **instant asset write off**<br><br>*Budget Time 12 May 2015 for small business entities using simplified depreciation | ■ Allows for an accelerated depreciation of eligible assets first held and first used or installed for a taxable purpose between 12 March 2020 and 30 June 2021<br>■ For asset eligibility and exclusion rules, see **backing business investment** |

## Applying depreciation incentives

The general steps to apply depreciation incentives are:

- Identify if you are an eligible business by calculating your **aggregated turnover**
- Determine which incentive to apply. Only one incentive can apply for an asset. If more than one incentive could apply, the order of application is (subject to opt out choices)
  – **temporary full expensing**
  – **instant asset write-off**
  – **backing business investment**
  – **general depreciation rules**
- Take note of whether you can choose to **opt out** of an incentive.
- Determine when you first held and first used or installed each asset for a taxable purpose.
- Consider if any exclusions or specific limits may apply (such as the **car limit**), even if incentives are uncapped.

**Full write-off:**

- means deducting the taxable use proportion of the cost of an asset.
- may also be available for improvement costs for eligible assets. Refer to our more detailed guidance on **temporary full expensing** for information on when these costs can be claimed.

DE-30275

# Interaction of tax depreciation incentives

| Am I an eligible business? | | Can I claim? | | | |
|---|---|---|---|---|---|
| **Type** | **Aggregated Turnover** | **Temporary full expensing**<br>Asset first **held FROM 6 October 2020** | **Instant asset write-off**<br>Asset first **used in business TO 11 March 2020** | **Instant asset write-off**<br>Asset first **used in business FROM 12 March 2020** | **Backing business investment**<br>Asset first **used in business FROM 12 March 2020** |
| **SMALL BUSINESS** **using simplified depreciation** | Less than $10m | YES<br>- Full write-off (including the balance of a **small business pool**)<br>- No cost restriction<br>- **Cannot opt out** | YES<br>- Full write-off<br>- Asset cost < $30,000<br>- **Cannot** opt out | YES<br>- Full write-off<br>- Asset cost < $150,000<br>- **Cannot** opt out | YES<br>- Accelerated Depreciation<br>- No cost restriction<br>- **Cannot opt out**<br>- Second-hand assets excluded |
| **SMALL BUSINESS not** using simplified depreciation | Less than $10m | YES<br>- Full write-off<br>- No cost restriction<br>- **Can opt out** (except for assets previously allocated to a **small business pool**) | NO<br>- only eligible if using **simplified depreciation** | NO<br>- only eligible if using **simplified depreciation** | YES<br>- Accelerated depreciation<br>- No cost restriction<br>- **Can opt out**<br>- Second-hand assets excluded |
| **MEDIUM BUSINESS** | $10m to less than $50m | YES<br>- Full write-off<br>- No cost restriction<br>- **Can opt out** | YES<br>- Full write-off<br>- Asset cost < $30,000<br>- **Cannot** opt out | YES<br>- Full write-off<br>- Asset cost < $150,000<br>- **Cannot** opt out | YES<br>- Accelerated depreciation<br>- No cost restriction<br>- **Can opt out**<br>- Second-hand assets excluded |
| **MEDIUM-LARGE BUSINESS** | $50m to less than $500m | YES<br>- Full write-off<br>- No cost restriction<br>- **Can opt out**<br>- Second-hand assets excluded | NO | YES<br>- Full write-off<br>- Asset cost < $150,000<br>- **Cannot** opt out | YES<br>- Accelerated depreciation<br>- No cost restriction<br>- **Can opt out**<br>- Second-hand assets excluded |
| **LARGE BUSINESS** | $500m to less than $5bn **OR** satisfies the **Alternative Income Test** | YES<br>- Full write-off<br>- No cost restriction<br>- **Can opt out**<br>- Second-hand assets excluded<br>- Further asset exclusions apply if you qualify under **Alternative Income Test** | NO | NO | NO |

For more information, visit **ato.gov.au/bounceback**

Information is current as at 6 May 2021