YEAR-END TAX BULLETIN

JUNE 2020

2020 TAX HIGHLIGHTS

The Federal Budget for 2020 has been deferred until October 2020 as a result of the pandemic. Our tax highlights for 30 June 2020 will consider some of the key stimulus measures the Government introduced in response to the pandemic.

Cash boost and Jobkeeper payments

The Government is providing eligible employers with assistance in paying and retaining staff during the pandemic. Assistance has been provided in the form of:

- Employer cash boost – additional credits provided to eligible small and medium sized employers who pay PAYG withholding in respect of payments made to employees. Employers should note that this payment will be not taxable, and you will need to remember this when you are preparing your income tax returns for 30 June 2020 and 30 June 2021
- Jobkeeper payment – payment of $1,500 per fortnight to eligible employers in respect of salary and wages paid to eligible employees. Also includes $1,500 to eligible sole traders, partnerships and company directors/shareholders. Eligibility based on reduction in turnover, with different thresholds based on the size of the employer (and its associates).

BDO has prepared detailed information in relation to these stimulus measures. These can be accessed here www.bdo.com.au/en-au/covid19.

Supporting apprentices and trainees

Eligible small business employers will be able to apply for a wage subsidy of 50% of the apprentice's or trainee's (in training as at 1 March 2020) wage for up to 9 months from 1 January to 30 September 2020, up to $21,000 per apprentice. Employers can register for the subsidy from early April 2020 with final claims for payment due by 31 December 2020.

TAX INCENTIVES FOR BUSINESS INVESTMENT

Instant asset write-off increased

For new or second-hand assets first used or installed ready for use from 12 March until 30 June 2020, the instant asset write-off threshold has increased from $30,000 to $150,000 for businesses with aggregated annual turnover of less than $500 million (up from the current $50 million threshold). The Federal Treasurer has announced an intention to extend the instant asset write-off of $150,000 to 31 December 2020. At the time of publication, this proposal has not been legislated.

The threshold applies on a per asset basis, so eligible businesses can immediately write-off multiple assets. The threshold will revert to $1,000 for small businesses (turnover less than $10 million) from 1 July 2020 (subject to the proposed extension of the $150,000 threshold to 31 December 2020 being legislated), however businesses not entitled to the instant asset write off from 1 July 2020 may be entitled to the 50% investment incentive (discussed below).

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Backing business investment incentive

The Government has introduced a time limited 15 month investment incentive (through to 30 June 2021) to support business investment and economic growth over the short term, by accelerating depreciation deductions.

Businesses with aggregated annual turnover of less than $500 million per annum will be able to deduct 50 per cent of the cost of an eligible asset upon installation, provided it was acquired after 12 March 2020 and first used or installed by 30 June 2021.

There is no asset value threshold for this 50% investment incentive. The existing depreciation rules will continue to apply to the remaining balance of the asset's cost over its effective life.

Therefore, an asset will generate the immediate deduction of 50%, plus in the same year will generate a Division 40 depreciation deduction calculated in accordance with the normal depreciation rules.

The measure results in businesses bringing forward depreciation deductions from future years to the current period resulting in a reduced tax liability in the current period. A rise in tax liability due to reduced depreciation in subsequent years will offset this reduction.

Instant asset write off – former rules

From 1 July 2018, taxpayers with a turnover less than $10 million can write off assets costing less than $20,000. From 29 January 2019, taxpayers with a turnover less than $10 million can write off assets costing less than $25,000. From 2 April 2019 (7.30pm), taxpayers with a turnover less than $50 million can write off assets costing less than $30,000 (to 30 June).

State Government Measures

The various state and territory governments have also introduced incentives and assistance packages for a wide range of businesses and taxpayers.

Information regarding these incentives can be accessed here: www.bdo.com.au/en-au/covid19.

SUPERANNUATION

Early release of superannuation

The Government is allowing individuals to access up to $10,000 of their superannuation savings in 2019-20 and a further $10,000 in 2020-21 ($20,000 in total). Individuals will not need to pay tax on amounts released, and the money they withdraw will not affect Centrelink or Veterans' Affairs payments.

SGC Amnesty

The Superannuation Amnesty has been legislated and is available until September 2020. The amnesty applies to super guarantee shortfalls from 1 July 1992 to the quarter commencing 1 January 2018. It does not apply to any shortfalls for quarters commencing on or after 1 April 2018.

To qualify, employers must pay each employee's full super guarantee entitlement, including nominal interest and any general interest charge. Where the employer does not have sufficient funds available, they can negotiate a payment plan with the Tax Office.

In all instances, the employer must make a full disclosure to the Tax Office of all shortfalls.

An employer that qualifies for the amnesty:

- will not have to pay the administrative component ($20 per employee per period) in respect of employees for whom the employer has an individual shortfall identified because of a disclosure under the amnesty
- will not be liable for the additional penalty (up to 200%) for failing to provide a super guarantee statement by the time they were required to do so; and
- can deduct payments made in relation to super guarantee charge imposed on the shortfall, or contributions that are offset against the charge, that are made during the amnesty.

Where employers do not take advantage of the amnesty, and they are subsequently identified by the Tax Office as being non compliant, a minimum penalty of 100% will be applied. This can extend to a 200% penalty in case of more serious non compliance.

BDO MATERIALS

BDO has prepared materials on all of these stimulus measures. These can be accessed with this link: www.bdo.com.au/en-au/covid19

INDIVIDUAL TAX RATES

At the time of publication, there have been no changes to the individual income tax rates for 30 June 2020. Below are the applicable rates for 30 June 2019.

2018-19 INDIVIDUAL TAX RATES		
	Threshold	Rate
1st rate	$0 - $18,200	0%
2nd rate	$18,201 - $37,000	19.0%
3rd rate	$37,001 - $90,000	32.5%
4th rate	$90,001 - $180,000	37.0%
5th rate	$180,001 +	45.0%

In addition, the Medicare levy is 2% of taxable income. Therefore, the top marginal tax rate for resident individuals will be 47% (including Medicare levy).

A new Low and Middle Income Tax Offset will also be available, providing a benefit of up to $255 for individuals earning under $37,000 and up to $1,080 for individuals earning between $48,000 and $90,000. The offset reduces by 3 cents for every dollar in excess of $90,000. There is no offset for taxpayers earning in excess of $126,000.

SMALL AND MEDIUM BUSINESS

Base Rate Entity Company Tax Rate

From 1 July 2016, the income tax rate applicable to qualifying companies reduced to 27.5%. The reduction progressively applied to companies based on their aggregated turnover in the years in question The 27.5% tax rate will apply to companies as follows:

YEAR ENDED 30 JUNE	TURNOVER
2017	$10 million
2018	$25 million
2019	$50 million
2020	$50 million

To qualify for the reduced income tax rate, companies must satisfy the passive income test (derive no more than 80% of their income from passive sources, as defined in the legislation).

In addition to prescribing the income tax rate applicable to companies, the turnover and base rate entity passive income test is also relevant to determining the rate at which companies can frank their dividends for an income year. It is important to note that, under the legislation, a company may have an income tax rate that is different from their franking rate.

TAX PLANNING TIP

Companies need to monitor their income tax rates as these may change from year to year. In particular, where rates are changing across years, companies may seek to time the derivation of income and/or the incurring of deductible expenses to take advantage of the changing rates (subject to prepayment rules and general anti avoidance rules).

Companies need to pay particular attention to the impacts of the business shutdown due to the pandemic. The changes in turnover may cause the company to move between thresholds in 2020 and 2021. This may result in a change of company tax rate, and more importantly, a change in the franking rate. It is the change in franking rate that companies should monitor carefully. The effects of this are illustrated below.

TRAPPED FRANKING CREDITS

From a franking perspective, a company's maximum franking rate is determined according to its corporate franking tax rate. For 30 June 2020, the company will have a 27.5% corporate franking tax rate where its turnover for 30 June 2019 is less than $50 million and it satisfies the base rate entity passive income test based on its 30 June 2019 income.

If the company pays a franked dividend based on profits of a previous year where the company's tax rate was higher than the franking rate for the current year, there may be trapped franking credits e.g. previous year rate 30% and current year franking rate 27.5% then 2.5% franking credits trapped in company.

TAX PLANNING TIP

Companies need to consider which franking rate they are subject to in the 30 June 2020 year, and which rate they will be subject to next year. Where the company may move from a 30% franking company in 2020 to a 27.5% franking company in 30 June 2021, there may be advantages in paying franked dividends prior to 30 June 2020 (subject to the position of the shareholders).

Higher Top-up Tax

Shareholders in companies that pay 27.5% franked dividends will have to pay higher top-up tax because the franking offset they receive will be lower than if the dividend was franked at 30%. Generally, this means the company tax cut is clawed back by the government when dividends are paid to resident shareholders.

For example, a company has $100 profit and pays 30% tax, and pays the $70 balance as a franked dividend to the shareholder. If the shareholder's marginal tax rate in 47%, they will pay tax on the $70 franked dividend of $17 (after franking offset) leaving the shareholder with $53 after tax.

However, if the company pays tax at 27.5% tax on the $100 income it can pay a $72.5 franked divided franked at 27.5%, in which case the shareholder pays $19.50 on the $72.50 franked dividend leaving the shareholder with the same $53 after tax.

SUPER GUARANTEE

The rate for superannuation contributions by employers on behalf of their employees under the SGC for the year ended 30 June 2020 is 9.5%.

Employers must make superannuation guarantee contributions for their employees on a quarterly basis within 28 days after the end of each quarter (September, December, March and June)

TAX PLANNING TIP

Although the June 2020 quarter SGC does not have to be paid until 28 July 2020, tax deductions for the superannuation contributions will only be available in the 30 June 2020 tax year if the contribution is received by the superannuation fund by 30 June 2020. A recent release from the Tax Office reminded all employers that deductions are not allowed when contributions are made via a clearing house until the payment has actually been paid by the clearing house to the trustee of the fund, and that this may take several days upon receipt by the clearing house.

TAXABLE PAYMENTS REPORTING SYSTEM

Businesses in building and construction are required to record payments to contractors and report these payments to the Tax Office. From 1 July, 2018, businesses engaged in the courier or cleaning industries were also required to make these reports. From 1 July 2019, the rules will extend to businesses engaged in IT, road (freight) transport, and security industries.

The annual report due to be lodged by 21 July 2020.

Director Penalties

Company directors should review their companies' reporting mechanisms to ensure they are adequately informed of their companies' financial position. The director penalty provisions may leave directors personally liable where their company fails to make PAYG Withholding and SGC payments by the respective due dates.

Moreover, from 1 April 2020, the director penalties provisions have been extended to cover outstanding payments for GST, wine equalisation tax and luxury car tax.

Defences against director liabilities include situations where the director has been ill, has taken all reasonable steps to ensure the outstanding liabilities have been paid, or in limited circumstances the director has been appointed to the company in the last 30 days. However, good evidence will be required for these defences.

Loans from Private Companies - Division 7A

Shareholders of private companies and associates may be assessed on a deemed dividend if the company provides them with loans, payments, loan forgiveness or private use of company assets, unless the requirements of Division 7A are satisfied.

Make sure all Division 7A loans made in the 30 June 2019 tax year have been either repaid or put under a complying Division 7A loan agreement by the lodgement date of the company's 2019 tax return.

Make sure the minimum repayment amounts have been made by 30 June 2020 for complying Division 7A loans made in the 2019 and previous years.

The Government announced in the 2019 Budget that the amendments to Division 7A have been deferred to commence from 1 July 2020. The extent of the amendments has not been announced. Since that time, there have been no further announcements regarding the amendments to Division 7A, and no draft legislation has been released. Due to the pandemic, it is likely that the planned changes have been further deferred.

TAX PLANNING TIP

To ensure all future Division 7A loans are covered by a qualifying loan agreement, consider entering into a Division 7A complying facility loan agreement that will be able to cover all future loans to shareholders or their associates. If such a facility loan agreement is already, in place review it regularly to ensure it complies with current law and covers all relevant shareholders and associates.

Once the 2020 amendments have been released, you should discuss your options with your adviser to ensure your current arrangements continue to satisfy the new Division 7A rules, once they are released.

TRUSTS

Unpaid Trust Distributions

Distributions made by trusts to associated private companies which remain unpaid at the end of the following year may be deemed to be a loan to the trust and become subject to Division 7A.

For the 2020 tax year, unpaid distributions to a private company that arose in the 2019 tax year may be a deemed dividend to the trust for the 2020 tax year unless the trustee:

- Has put the amount in a sub-trust for exclusive benefit of the private company by the earlier of the lodgement date or due date for lodgement of the trust's 2019 tax return (usually 15 May 2020)
- Converts the amount to a Division 7A complying loan by the earlier of the lodgement date or the due date for lodgement for the 2020 company tax return; or
- Pays the amount to the company by the earlier of the lodgement date or due date for lodgement for the company's 2020 tax return.

For unpaid distributions that have been placed into a sub-trust, the annual return on the sub-trust investment must be paid to the private company by 30 June 2020.

The taxation of unpaid present entitlements under Division 7A is subject to the current review of the provisions. As noted above, the new Division 7A is scheduled to commence from 1 July 2020, although the amendments have not yet been released. We recommend you discuss your options with your BDO adviser once the new Division 7A rules are released to ensure your UPE arrangements continue to satisfy Division 7A.

Reimbursement agreements

Trustees are also reminded of the application of Section 100A of the 1936 Act, especially where a trust has made a distribution of income to a private company.

Where the Tax Office determines that Section 100A applies to an arrangement, the net income that would otherwise have been distributed by the trustee is instead assessed to the trustee at the highest marginal rate.

Section 100A will not apply to ordinary commercial or family dealings.

In a recent publication, the Tax Office considered the following arrangement, referred to as the washing machine, would attract Section 100A:

- The trustee owns all the shares in a private company
- The company is also a beneficiary of the trust and undertakes no activity but derives a small amount of bank interest on its own account
- The directors of the private company and the trustee company are the same individuals or related individuals
- The trustee resolves to make the company presently entitled to some or all of the trust income in year 1 and distributes that to the company prior to the lodgement of the trust's tax return in year 2
- The company includes the distribution in its assessable income for year 1
- Division 7A does not apply to the arrangement because the company's entitlement is paid before the lodgement of the income tax return
- The company pays a fully franked dividend in year 2 to the trustee. This forms part of the trust's income in year 2
- The trustee makes the company presently entitled to all of some of the trust income at the end of year 2
- The arrangement is repeated.

The reimbursement agreement results in the distribution benefitting a party other than the beneficiary (it instead benefits the trustee). The reimbursement agreement provides for the payment of income from the trustee to the company on the understanding (implied from the repetition in each income year and their common control) that the company would pay a dividend to the trustee of a corresponding amount (less the tax paid).

The agreement is designed to achieve a reduction in tax that would otherwise be payable had the trustee simply accumulated the income.

This agreement is not an ordinary commercial dealing because the ownership structure and, particularly, the perpetual circulation of funds, serve no commercial purpose.

There are hybrids of this scheme which involve money flowing from the company via interposed entities, ultimately ending up back in the trust. These have also been identified by the Tax Office as possibly giving rise to a Section 100A determination.

TRUST DISTRIBUTIONS AND RESOLUTIONS

Most discretionary trust deeds require distribution determinations for 30 June year end be made before 30 June, or earlier. Trustees must make these determinations prior to 30 June or the date in the deed if earlier than 30 June.

Trust Streaming

Under the streaming provisions, trustees can stream franked dividends and capital gains to specific beneficiaries, rather than distributing these amounts as part of the general distribution to beneficiaries.

The deed must not prevent the trustee from streaming these amounts to specific beneficiaries. In addition, the beneficiaries who are to receive these amounts must be specifically entitled to them, and the trustee must record the streamed distributions in the accounts or records of the trust, by 30 June 2020 for franked dividends or by 31 August 2020 for capital gains (although the trust deed will usually require the trustee's distribution determination to be made by 30 June 2020).

TAX PLANNING TIP

You and/or your tax adviser should regularly review your trust's deed to ensure you and/or your tax adviser understands how it interacts with the various tax requirements, some of which are mentioned above.

TFN TRUST REPORTING

Trustees of resident discretionary trusts, family trusts and other closely held trusts are reminded they are required to report new beneficiaries' tax file number (TFN) and certain personal information to the Tax Office. For 30 June 2020 the TFN report of new beneficiaries must generally be made to the Tax Office by 21 July 2020.

If the beneficiary has not provided their TFN to the trustee, the trustee will have to withhold tax from the trust distribution where the beneficiary becomes presently entitled to trust income or is paid an amount of trust income.

TAX PLANNING TIP

To ensure you don't miss the reporting of beneficiaries TFN's we suggest you report to the ATO the TFN's of all likely beneficiaries of the trust now, even though they may not be receiving a distribution until a future year.

ONGOING YEAR END ISSUES

Small Business Entities

- The small business turnover threshold has increased from $2 million to $10 million. Benefits include simplified depreciation and trading stock rules
- Thresholds for the small business CGT concessions remains at $2 million turnover or $6 million net asset test.

Timing of Income Derivation

- Determine whether you should use cash or accruals tax accounting
- Consider deferring receipt until after 30 June 2020
- Alternatively, if you are in a tax loss, consider accelerating the receipt of income prior to 30 June 2020.

Income Received in Advance

- Income received in advance is not taxed until services are provided as long as income credited to unearned income account, and released to profit when the services are provided.

Timing of Expenses

- Expenses are deductible if incurred by 30 June 2020
- Provisions are generally not deductible
- Some accruals are not deductible
- Some prepayments are not deductible until future years
- Interest paid after business ceases may continue to be deductible.

Repairs

- Deduct repairs and maintenance incurred before 30 June 2020, unless they relate to initial repairs, substantial replacement or improving an asset.

Gifts

- Donate to deductible charities before 30 June 2020 - check recipient endorsed deductible gift recipient
- Gifts not deductible if some benefit is received by donor except when given at an "eligible fundraising event" (special conditions apply).

Bad Debts

- Review all debts before 30 June 2020
- Write-off bad debts before year end to get deduction in that year (provision for doubtful debts not deductible).

Trading Stock

- Valuation - choose cost, market value or replacement
- Identify any obsolete stock – special valuation rule
- Scrap unwanted stock by 30 June
- Small business entity taxpayers do not undertake a stock valuation if the difference between opening and closing value is less than $5,000.

Prepayments/Advanced Expenditure

- Prepay deductible expenditure by 30 June 2020
- Prepayment rules operate to spread deduction over more than one year
- Prepayment rules do not apply to salary, amounts required to be paid by law or a court, or expenditure under $1,000
- Small business entity taxpayers and non-business individuals are allowed prepayments in year incurred if the benefit does not extend beyond 12 months.

Director and Employee Entitlements

- Conduct shareholders' meeting before 30 June 2020 to approve directors' fees to obtain deductions for 2020
- Ensure arrangements for employee bonuses based on 2019/2020 results are in place before 30 June 2020 to get deductions for the 2020 year.

Sale of Investments and Businesses

- Where CGT assets can be realised for a gain, delay sale until after 30 June, unless you have losses that may be lost because of company/trust loss rules
- Crystallise capital losses to offset gains, however, losses may be disallowed in the event of wash sale where loss asset or similar asset reacquired or continues to be controlled by the taxpayer
- If CGT assets held for less than 12 months by individuals, trusts or super funds that are eligible for the CGT discount, consider delaying sale until 12 months has passed
- For small business entities with CGT assets less than $6 million or annual turnover less than $2 million, consider small business CGT concessions and restructure rollover relief
- If assets sold via an earn-out arrangement apply the look through approach that applies from 24 April 2015.

Ceasing Business or Business Sold

- Consider consequences of payments for employee entitlements, transfer of employee entitlements to a new employer and redundancy payments
- Consider if small business concessions, rollovers, or super contributions are available
- Consider whether expenses incurred after business ceases may still be deductible.

Business Related Costs / Project Costs

- Project costs are deductible over the life of the project
- Other business related costs not otherwise deductible, not included in a CGT cost base nor capital allowance cost, may be deductible over five years
- It is essential the costs relate to a business that is, was, or will be carried on for a taxable purpose.

Depreciation

- Scrap obsolete items by 30 June 2020 to claim undepreciated cost
- Increase depreciation by reassessing effective life of assets if asset's effective life is less than ATO estimates of effective life.
- For items that cost less than $1,000 consider a low value pool, with diminishing value rate of 37.5%
- Assets that are subject to the asset write off (subject to threshold and cost limits) can be immediately deducted. Refer to our earlier discussion regarding qualifying assets and taxpayers
- Other small business assets may be placed in the small business depreciation pool and depreciated at 15% in the first year and 30% in subsequent years
- If not a small business, some depreciable items of less than $100 may be immediately deductible, see PSLA 2003/8 ($300 if not in business).

Imputation

- If shares not held at risk for at least 45 full days, franking offset may not be available (except individuals whose franking offset less than $5,000)
- Trusts beneficiaries lose franking offset unless beneficiaries have vested and indefeasible interest in the shares held at risk for at least 45 days or family trust election made and trustee held shares at risk for at least 45 days
- Where company pays more than one dividend in franking period, ensure all dividends franked under benchmark rate (franking percentage of first dividend).

Year End Tax Effective Investments

- Has promoter obtained product ruling
- Ensure promoter operated the scheme in accordance with product ruling
- Check if the investment is the subject of a Taxpayer Alert
- Consider Part IVA and other integrity measures
- Warning signs include contrived or artificial arrangement, limited or non-recourse funding; low cash outlay; in-built exit strategy; prepayments; arrangement not economically viable without tax benefit; arrangement not independently assessed for viability.

Home Office Expenses

- Portion of interest, rent and insurance are not deductible unless you are carrying on business from home and the area is separate and distinguished from private living areas
- Converting spare room not sufficient
- Power, heating and depreciation can be claimed at a flat rate established by ATO even if room is not exclusively set aside for a home office
- If an office is provided by the employer, working from home as a convenient place to do part of the work may not be sufficient to claim home office expenses
- For individuals who are working from home because of the pandemic, the Tax Office has released a ruling regarding a simplified approach to claiming home office expenses (PCG 2020/3).

The ruling applies to individuals who are working from home to fulfil their employment duties or to run their business, and incurring additional running expenses that are deductible as a result of working from home. For qualifying taxpayers, rather than claim a deduction under the ordinary rules, individuals can keep a record of the hours worked at home, and claim a deduction of 80 cents per hour.

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