

Tax Update – March 2022

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The 2022-23 Federal Budget, and the quick turnaround on the ‘cost of living’ measures legislation, dominates this month.

In reality, we’re all just waiting for the election to be called, decided, and progress made on the series of outstanding tax reforms, particularly residency and Division 7A.

As always, we’re here if you there are any questions you have!

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Budget 2022-23

The Federal Budget was handed down on Tuesday 29 March 2022.

You can [download the full Budget summary here](#). Or, the [white label client update](#).

Key measures include:

- **Cost of living initiatives** – the legislation for these measures passed Parliament on 30 March. See [Legislation](#).
 - The 6 month, 50% reduction in the excise and excise-equivalent customs duty rate that applies to petrol and diesel. This applies to all other fuel and petroleum based products except aviation fuels.
 - The \$420 increase to the low and middle income tax offset – this applies to the current financial year and will be triggered when taxpayers lodge their tax return
 - The one-off \$250 cost of living payment to some Australian resident social welfare recipients – this amount will be paid in April
 - The increase to the Medicare Levy and Medicare Levy Surcharge Income Thresholds
 - Changes to the Corporations Act to streamline Employee Share Schemes rules where participants do not have to pay or borrow to participate in the scheme
 - The temporary reduction in the GDP uplift factor for tax instalments to 2% for the 2022-23 income year
 - Lowering of the concessional and general safety net thresholds for the pharmaceutical benefits scheme; and
 - The specific deduction for COVID-19 test expenses of individuals.
- Extension of the Home Guarantee Scheme
- Extension of the 'Patent Box' tax regime to agriculture and emissions reduction
- The digital and skills tax boost for businesses with an aggregated turnover

below \$50m that offers \$120 deduction for every \$100 spent on skills and training, or technology.

- Corps Act changes to expand access to Employee Share Schemes.

From Government

Exposure draft legislation for digital games tax offset

Treasury has released draft legislation for the introduction of a tax offset aimed at digital games development. The rules would provide a refundable tax offset equal to 30% of a company's total qualifying Australian development expenditure (up to a limit of \$20 million).

Australian resident companies will be eligible to claim the offset when a certificate has been issued by the Arts Minister the completion of a new game, the porting of a digital game to a new platform, or for ongoing development of one or more existing digital games during an income year.

To be eligible for the certificate, the company must be primarily responsible for the development of the game. This would be a company that owns or controls the rights to develop the digital game and that undertakes the development of the game. This could include a company that has been engaged to develop the game by the entity owning the rights.

Games can be eligible for the tax offset if they have been primarily developed to be made available to the public for entertainment or education purposes over the internet. This includes games made available for use over the internet, primarily played through the internet,

or where the game operates only when a player is connected to the internet.

The offset is not intended to apply to the following:

- Games which have been refused a classification or are not likely to obtain a classification; or
- Games which contain gambling elements or are not made for the purposes of entertainment or education.

More information

- [Digital Games Tax Offset](#)

From the Regulators

Additional guidance on cryptocurrency

The ATO has released some further high-level guidance on the tax treatment of cryptocurrency which might be useful in determining the tax outcome for clients who are involving in cryptocurrency transactions. Key points made by the ATO include the following:

- The ATO expects that most people will hold cryptocurrency as an investment and that the disposal of cryptocurrency give rise to a capital gain or loss. Each item of cryptocurrency is a separate asset for CGT purposes. When a taxpayer disposes of one item of cryptocurrency to acquire another, they are disposing of one CGT asset and acquiring another CGT asset.
- The ATO's view is that it can be difficult to access the personal use asset exemption for CGT purposes when it comes to cryptocurrency. Personal use assets are CGT assets that your clients use mainly for their personal use or enjoyment. Most items of cryptocurrency are held to make a profit. The longer cryptocurrency is held, the less likely it will be a personal use asset – even if

the taxpayer ultimately uses it for personal use or consumption.

- Some clients could be considered to be carrying on a business of trading in cryptocurrency. If so, the trading stock rules apply which means:
 - The cost of acquiring cryptocurrency held as trading stock is deductible;
 - Sale proceeds are included in assessable income on revenue account, rather than being recognised as a capital gain;
 - Changes in the value of trading stock held at the end of the financial year may need to be reported.
- When a taxpayer provides cryptocurrency to another party as a gift this triggers a CGT event and may have tax consequences. The market value substitution rules need to be considered for both parties. For the recipient there are generally no CGT requirements until they dispose of the item.

More information

- [Cryptocurrency – investing, trading and gifting](#)

Changes to a loss carry back choice

The ATO has released guidance for taxpayers on how to go about changing a choice made under the loss carry back rules for companies. The ATO states that a specific form will be made available for this purpose although it has not yet been released. The current advice for clients who need to change their loss carry back choice before the form is available is to contact the ATO at LCBchangeinchoice@ato.gov.au.

Unfortunately there seems to be little guidance on the scope of the changes that can be made to the choice. The examples provided by the ATO broadly cover situations where the previous year tax liability is increased and the company changes its choice in order to carry back a larger amount of losses to offset the tax that would be payable.

Another example provided in the explanatory memorandum refers to a company changing the choice to reduce the loss carried back as the original choice referred to an amount above the franking account balance (i.e. there were excess losses carried back that did not give rise to an offset).

More information

- [Change in loss carry back choice](#)

Re-contribution of COVID-19 early release super amounts

It is now possible for taxpayers to re-contribute amounts they withdrew under the COVID-19 early release of super program without them counting towards their non-concessional contributions cap. These contributions can be made between 1 July 2021 and 30 June 2030. These contributions are being treated as personal contributions that the ATO will exclude from the individual's non-concessional contribution cap.

Advice of the re-contribution needs to be made using the approved form (see the link below). SMSFs need to report this information for their members to the ATO at or before the time of lodging their SMSF Annual Return for the income year in which the member made the COVID-19 re-contribution. The ATO guidance illustrates how this can be done through online services for businesses or online services for agents.

More information

- Re-contribution of COVID-19 early release super amounts
- Notice of re-contributions of COVID-19 Early Release amounts (the approved form)

Adjusting baseline headcount for JobMaker

The ATO has confirmed that for JobMaker Periods 5 to 7 (i.e., from October 2021 to October 2022) a taxpayer's entitlement is based on an adjusted baseline headcount, which is based on information provided in earlier claims.

The ATO states that the adjustment involves calculating the greatest headcount increase that occurred in a period that began 12 months or more before the current claim period, and then adding that increase to the baseline headcount.

This adjustment is required because eligible businesses can only claim the JobMaker Hiring Credit for up to a year for each additional job created.

More information

- JobMaker Year 2: adjusting baseline headcount
- Conditions for making a JobMaker Hiring Credit claim

Eligibility age change for downsizer contributions

The Government previously announced that there would be a reduction in the eligibility age for downsizer contributions from 65 to 60 years old. This change is now law.

From 1 July 2022, eligible individuals aged 60 years or older can choose to make a downsizer contribution into their superannuation fund of up to \$300,000 per person (\$600,000 per couple) from the proceeds of selling their home.

More information

- [Eligibility age change for downsizer contributions](#)

Rulings, Determinations & Guides

Aggregated annual turnover

[TD 2022/5](#) (corporate limited partnerships)

[TD 2022/6](#) (indirect control test)

[TD 2022/7](#) (foreign hybrids)

The ATO has issued final versions of three determinations that were issued in draft form in October last year. The determinations look at the concept of aggregated annual turnover and the connected entity rules.

[TD 2022/5](#) considers the connected entity rules with respect to corporate limited partnerships. As these entities are classified as companies for Australian tax purposes, the ATO confirms that you apply the control tests as if the partnership was a company.

[TD 2022/7](#) explains the application of the connected entity rules with respect to partnerships, foreign hybrids and non-entity joint ventures. While partnerships are not separate legal entities, for the purpose of these rules they are treated as if they were an entity. While the ATO confirms that a partnership can potentially be treated as a connected entity of another entity, a partnership is not capable of being treated as an affiliate of another entity.

As foreign hybrids are generally treated as if they were partnerships for Australian tax purposes, you would normally apply the connected entity rules to foreign hybrids in much the same way that you would apply the rules for a 'normal' partnership.

On the other hand, a non-entity joint venture is not a separate entity in its own right and is not treated as a separate entity for tax purposes. As a result, the relevant entities for these purposes

are each of the parties to the non-entity joint venture, in their separate capacities.

[TD 2022/6](#) covers the public entity exception to the indirect control test. Generally, where one entity controls another (the second entity), and the second entity controls another (the third entity), the first entity is also taken to control the third entity. However, there is a specific exception from these rules which applies where the interposed entity (i.e., the second entity) is a public entity such as a listed company or a public unit trust. Despite this carve-out from the indirect control rules, it is still possible that the first entity could directly control the third entity where it has a sufficient direct interest.

LAFHA reasonable amounts

[TD 2022/2](#)

The determination sets out the reasonable amounts for food and drink expenses incurred by employees receiving a living away from home allowance benefit from 1 April 2022, both within Australia and overseas.

Amounts of reasonable food and drink - within Australia	Per week (\$)
One adult	289
Two adults	434
Three adults	579
One adult and one child	362
Two adults and one child	507
Two adults and two children	580
Two adults and three children	653
Three adults and one child	652
Three adults and two children	725
Four adults	724

The rates for employees living outside Australia depend on the country involved.

FBT: Private use of motor vehicles other than cars

[TD 2022/3](#)

The cents per kilometre rates for calculating the taxable value of fringe benefits arising from the private use of motor vehicles from 1 April 2022 have increased slightly from the previous FBT year and are summarised below.

Engine capacity	Rate per kilometre
0 - 2500cc	58 cents
Over 2500cc	69 cents
Motorcycles	17 cents

Cents per km rate for 2023

[LI 2022/D8](#)

The Commissioner has released a draft legislative instrument indicating that the cents per km rate will be 75 cents per km for the 2023 income year. This is applicable to individuals who choose to apply the cents per km method when calculating income tax deductions for work-related car expenses.

Legislation

Cost of living Budget measures

[Treasury Laws Amendment \(Cost of Living Support and Other Measures\) Bill 2022](#)

On 30 March 2022, the Government introduced a Bill to Parliament containing a number of measures that were announced in the 2022-23 Federal Budget. The Bill passed through both Houses of Parliament on the same day. Some of the key measures contained in the Bill are summarised below:

- An increase in the Medicare Levy and Medicare Levy Surcharge income thresholds for the 2022 income year.
- The introduction of specific rules which enable an individual to claim a deduction for the cost of COVID-19 tests which are used to determine whether they may attend or remain at a place where they engage in income producing activities (including employment or business activities). The EM confirms that FBT should not apply when tests are provided to employees to determine whether they can attend or remain at a place of work because of the 'otherwise deductible rule'.
- A reduction in the GDP adjustment factor used by the Commissioner to work out PAYG instalments under the Quarterly Instalment Amount method for the 2022-23 income year to 2% (instead of 10%).
- An increase in the low and middle income tax offset for the 2021-22 income year by \$420.
- A \$250 'cost of living payment' to be made to \$250 to certain Social Security and Veterans' income support and compensation recipients.
- A temporary 50% reduction of the excise and excise-equivalent customs duty rates for fuels, including petrol and diesel and similar petroleum-based products, including oils and grease. The reduced rate is to apply for six months from 30 March 2022 until 28 September 2022.

Regulations supporting recent superannuation amendments

[Treasury Laws Amendment \(Enhancing Superannuation Outcomes\) Regulations 2022](#)

These regulations have been released in support of the changes to the reduced eligibility age for downsizer contributions into superannuation from 65 to 60 years, and in connection with the repeal of the work test for non-concessional and salary sacrificed contributions for individuals aged from 67 to 74 years (inclusive), which are now law.

