

TAX UPDATE – APRIL 2023

The important details for accountants & advisers across April 2023

What did I miss?

1.7 million taxpayers will be drawn into the ATO’s residential investment property data matching program utilising bank data. The focus is on taxpayers incorrectly apportioning loan interest costs where loans have been refinanced or redrawn for private purposes.

And, for all those who have ‘content creator’ clients on YouTube, OnlyFans and others, the ATO has released a brief guide on their expectations. There are a few issues, including the need to declare products received as income, that might surprise clients.

Coster Galgut Pty Ltd
(03) 9561-1266

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From Government

Budget 2023-34

The 2023-24 Federal Budget will be released on Tuesday, 9 May 2023.

As a mid-term Budget, this should be an interesting one. Cost of living is a focus but on this, the Government is walking a tightrope between easing pressure without increasing inflation, with the potential of an economic downturn.

Measures set to expire:

- **Temporary full expensing** is scheduled to end on 30 June 2023. It will be interesting to see if the Budget extends this measure, possibly with some tightened parameters, or whether the Government will announce any new measures aimed at small business.
- **\$1,500 low and middle income tax offset** - the Government has announced that this measure will not be extended.

New measures announced:

- The **Small Business Energy Incentive** encourages small and medium businesses with an aggregated turnover of less than \$50 million to invest in spending that supports “electrification” and more efficient use of energy. Up to \$100,000 of total expenditure will be eligible for the incentive, with the maximum bonus tax deduction of \$20,000 per business. Eligible assets or upgrades will need to be first used or installed ready for use between 1 July 2023 and 30 June 2024 to qualify for the bonus deduction.
- From 1 July 2023, access to the Government’s **Home Guarantee Scheme** will be expanded to joint

applications from “friends, siblings, and other family members” and to those who have not owned a home for at least 10 years.

- 30% tax on earnings where a superannuation fund member has a balance exceeding \$3m (exposure draft legislation was released by Treasury on 31 March).

Coming into the Budget, a series of outstanding issues for accountants and advisers remain:

- **Technology and training boosts** - In the 2022-23 Federal Budget, the former Government announced that it would provide certain business taxpayers with ‘bonus’ tax deductions for investing in employee training or improving digital operations. The Skills and Training Boost would allow small businesses (aggregated turnover less than \$50 million) to claim a 120% deduction for eligible expenditure incurred on external training for employees between 29 March 2022 and 30 June 2024. The Technology Investment Boost would provide a 120% deduction for eligible expenses that are incurred for the purposes of improving digital operations or digitising business operations. This can include the cost of depreciating assets. The boost is aimed at costs incurred between 29 March 2022 and 30 June 2023 and is limited to a maximum bonus deduction of \$20,000. However, the legislation enabling both boosts has not passed Parliament. There is an opportunity in the Budget to extend the scope and nature of the concessions and the outcome of the Senate enquiry seems to support this. See [Treasury Laws Amendment \(2022 Measures No. 4\) Bill 2022](#).
- **Division 7A** - Not meaning to sound like a squeaky wheel but ... sweeping reforms were announced to simplify the application of Division 7A in the 2017-18 and 2018-19 Federal Budgets. In October 2018, Treasury released a consultation paper that explained how many of the proposed changes to Division 7A might apply. While the changes were due to commence from 1 July 2019, in the 2019-20 Federal Budget the Government announced that the start date would be deferred until 1 July 2020. This was later updated again with the Government announcing that the changes would only commence from the start of the first income year starting after the Bill containing the changes receives Royal Assent. So, certainty on this would be nice.

- **Residency of SMSFs** –The 2021-22 Budget announced that the residency rules for SMSFs and small APRA regulated funds would be relaxed by extending the central control and management test safe harbour from two to five years for SMSFs, and removing the active member test for both fund types. Due to commence on 1 July 2022, the measure was deferred to the income year commencing on or after the date of Royal Assent of the enabling legislation. Once again, certainty would be nice.

Country-by-country reporting consultation

As part of a range of measures aimed at improving corporate tax transparency, exposure draft legislation has been released proposing an additional public country-by-country reporting requirement for large multinational groups. The draft legislation requires the parent entity of these groups to publish selected tax information on an Australian Government website.

The details to be published could include (broken down by country):

- A description of the main business activities
- The number of employees
- Revenue from related parties
- Expenses from related party transactions
- Profit and loss before income tax
- Income tax paid
- The effective tax rate

More information

[Public country-by-country reporting](#)

Tracking superannuation fund performance

APRA is required to conduct an annual performance test for MySuper products. The assessment under the [performance test](#) is intended to hold registrable superannuation entities (RSE) licensees to account for under-performance.

The Government is updating the annual performance test to address issues that were raised in the Treasury review – *Your Future, Your Super*. Treasury has now released the *Superannuation Performance Test Regulations 2023* for consultation.

The regulations make some minor changes to the operation of the performance test, including extending the lookback period from 8 to 10 years, increasing the range of investments that are covered and can be included in the performance test, changing the content of the form required to be sent to members where a fund fails the test, and other minor amendments.

More information

[Superannuation Performance Test Regulations 2023](#)

From the Regulators

Income of ‘OnlyFans’ and other content creators

The ATO has released some guidance on key tax issues that need to be considered by content creators. One of the key messages from the ATO is that taxpayers who receive benefits in connection with the creation of content might need to declare this as income for tax purposes, regardless of whether the income is received in cash or other goods.

The ATO indicates that some content creators might receive money from selling merchandise or might receive subscription fees from supporters to access content. Content creators might also receive tips or gifts. All of these can potentially be classified as assessable income and might need to be declared as income for tax purposes.

Other issues that content creators will need to consider include:

- Cash flow considerations. Receiving goods with a large value could generate a significant tax liability. Does the content creator have sufficient cash to pay the tax?

- The income received could impact on study loans or Medicare levy calculations.
- If the turnover from the activity is at least \$75,000 the taxpayer will generally need to register for GST.

If a content creator receives income from foreign parties then this can complicate the tax position, especially when it comes to the GST system. Certain supplies made to a foreign resident can be GST-free, but the rules in this area can be complex and taxpayers and their advisers really need to look at this in detail.

Unfortunately, the ATO guide doesn't really look at situations involving hobbies. Some taxpayers might have a reasonable basis for arguing that items they receive occasionally should not be included in their assessable income if this genuinely relates to a hobby. However, this really depends on the situation and the ATO guide serves as a warning that taxpayers who fail to recognise items received in relation to content creation as income could be subject to ATO review.

More information

[Is your content creating you income?](#)

1.7 million drawn into bank derived residential property data matching

The ATO has commenced a new data matching program relating to residential investment property loans. The program will involve data provided by financial institutions (e.g., banks) starting from the 2022 income year.

The program aims to reduce the tax gap arising from the incorrect reporting of rental property income and expenses, which forms a significant part of the overall tax gap for individuals. The ATO has identified a key driver of the tax gap in this area has been rental property owners incorrectly apportioning loan interest costs where loans have been refinanced or redrawn for private purposes.

The data matching program will involve details of loan accounts and transactions relating to residential real estate investments. This will include information about

loan account holders, the property involved, repayments and interest charged.

Practitioners should expect interest deduction claims to come under increased scrutiny as a result of this data matching program. As the tax treatment of interest expenses can be a complex area and the numbers involved can be significant it is important for practitioners to ask the right questions when discussing rental property deductions with clients.

More information

- [Residential investment property loan 2021–22 to 2025–26 data-matching program protocol](#)
- [Gazette notice: Commissioner of Taxation – Notice of a residential investment property loan \(RIPL\) data-matching program 3 April 2023](#)

GST on grants received by non-profit entities

The ATO has published some updated guidance on the GST implications for not-for-profit organisations which receive government grants and sponsorship income.

From a GST perspective the key issue is whether the entity makes a supply in connection with the receipt of the funds.

Normally, a grant or similar receipt is not subject to GST if the entity is only required to meet general eligibility criteria to receive the grant. On the other hand, if the entity is required to provide something of value in exchange for the payment this increases the likelihood that GST will be triggered. This could be the case in situations where the entity:

- Enters into a binding legal obligation to do something;
- Enters into a binding legal obligation to refrain from doing something; or
- Provides goods or services.

When it comes to sponsorship arrangements the entity would often provide benefits such as advertising, signage, naming rights etc., in return for the payment. As such, the arrangement would normally trigger a GST liability if the entity is registered for GST.

The ATO guide also looks at situations where ancillary funds provide money, property or benefits to other deductible gift recipients (DGRs). Ancillary funds will sometimes enter into funding agreements with DGRs when they provide a grant. Funding agreements generally do not create a binding contract, they merely express an expectation that the DGR will use the grant to further its activities. In those cases, the ATO suggests that while a funding agreement may create an expectation to do something, it generally does not create a supply, and GST should not be applicable.

More information

[Grants and sponsorships for not-for-profits](#)

Register of foreign ownership of Australian assets

The Government and ATO are in the process of creating an updated and comprehensive Register of Foreign Ownership of Australian Assets that will replace existing foreign investment registers that are currently managed by the ATO and expand on the assets that will be registered. From 26 June 2023 foreign investors and their representatives will use ATO Online services for managing this process.

The new register will consolidate existing ownership registers relating to agricultural and residential land and water interests and will be expanded to include:

- Residential land
- Commercial land
- Agricultural land
- Business and entity related interests
- Mining, production, and exploration tenements

The ATO will be responsible for administration of the register and will provide further details after the register has been established.

More information

[Register of Foreign Ownership of Australian Assets](#)
[Online services for foreign investors](#)

Conservation covenant tax concessions

A range of tax concessions can be available for taxpayers who have entered into a conservation covenant over land they own if certain conditions are met. The conservation covenant must restrict or prohibit certain activities on the land that could degrade the environmental value of the land, be permanent and if possible be registered on the title to the land and be approved by the Environment Minister.

If the relevant conditions are satisfied then it is possible for the taxpayer to claim a tax deduction for the amount of the decrease in the market value of the land, to the extent the decrease is attributable to entering into the covenant. The deduction cannot add to or create a tax loss, however it can be spread over 5 years in some cases.

To claim the deduction:

- The taxpayer must not receive money, property or any other material benefit.
- The covenant must be:
 - i. over land that the taxpayer owns (leased property is not eligible)
 - ii. entered on or after 1 July 2002
 - iii. perpetual, that is, it is binding on the taxpayer as the current landowner as well as all future owners of the lands
 - iv. entered into with a DGR; the Commonwealth, a State, a Territory or a local governing body; or an authority of the Commonwealth, a State or a Territory.
- The market value of the land must decrease as a result.
- The decrease in the market value of the land must be more than \$5,000 or the taxpayer must have acquired the land not more than 12 months before entering the covenant.

A valuation obtained by the ATO is required to claim the deduction.

It is also necessary to consider CGT implications associated with entering into a conservation covenant. CGT event D4 happens if you enter into a conservation

covenant over land that you own. Depending on the situation, it is possible for a capital gain or capital loss to arise under CGT event D4. Having said that, CGT event D4 is ignored if you did not receive any capital proceeds for entering into the covenant and you cannot deduct an amount under Division 31 for entering into the covenant. In that case, CGT event D1 needs to be considered instead.

More information

[Conservation covenant tax concessions](#)

PAYG withholding prefill data for activity statements

From July 2023 the ATO will be using salary and wage data from Single Touch Payroll (STP) lodgments during each tax period to pre-fill the employer's PAYG withholding amounts in their activity statements.

The pre-filled data will be available for:

- Label W1: Total salary, wages and other payments
- Label W2: Amount withheld from payments shown at W1

Employers will still need to check the data and make any adjustments as required.

Whether this will also be available in your accounting software will depend on the provider and the product used.

More information

[ATO PAYGW prefill is coming to activity statements](#)

[STP and activity statements](#)

Cyber security for small businesses

The ATO has published some brief tips for small business owners wishing to improve their systems in light of the increased risk of cyber security threats. Some of the guidance includes:

- Installing all software and app updates. Using outdated versions of software can expose systems to more recently developed attacks.
- Turning on automatic updates. This can reduce the risk of missing out on important updates.
- Using multi-factor authentication (MFA) where possible. MFA combines 2 or more security measures such as a fingerprint, password or physical tokens to protect accounts.
- Using strong passwords that are difficult to guess. Long, unpredictable and unique phrases are difficult for cybercriminals to crack.
- Teaching business owners and staff how to prevent, recognise and report cyber incidents. Some guidance can be found at the link [here](#).

Given the increased prevalence of cyber security threats and the material impact that this can have on a business and its reputation, clients should consider seeking advice from their IT providers to determine whether risks are being adequately identified and managed and determine whether there are additional practical measures that should be implemented.

More information

[Cyber safety checklist for small business owners](#)

Rulings, Determinations & Guidance

Extension of STP exemption for WPN holders

[LI 2023/D9](#)

This draft legislative instrument will see the exemption from STP reporting for employers with a withholding payer number (WPN) extended until 30 June 2026.

If finalised, the instrument provides that an entity will be exempt from a STP reporting obligation if:

- The obligation arises in the period beginning on 1 July 2023 and ending on 30 June 2026; and
- At the time the obligation arises, the entity:
 - a) Does not have an ABN; and
 - b) Has been assigned a Withholding Payer Number by the ATO for the purposes of PAYG withholding.

Cases

Decision impact statement for the *Guardian* case

[Commissioner of Taxation v Guardian AIT Pty Ltd ATF Australian Investment Trust](#)

The ATO has issued a decision impact statement following the Full Federal Court decision in the *Guardian* case, which looked at both the reimbursement agreement rules in section 100A and the general anti-avoidance rules in Part IVA.

The ATO has indicated that a number of observations made by the Court confirm the views set out in [TR 2022/4](#), including that:

- Section 100A can only apply if there is a reimbursement agreement that exists at or before the time the beneficiary is made presently entitled to the income of the trust. In trying to determine whether a reimbursement agreement exists at the relevant time the ATO may need to interview participants in the relevant transactions.
- An arrangement that constitutes an agreement can be both informal and unenforceable, and the parties may be free to withdraw from it or to act inconsistently with it, notwithstanding their adoption of it.
- There needs to be a common intention, or consensus existing between at least two parties, in order for an agreement to exist.

In the *Guardian* case the Court concluded that in circumstances where advisers are not parties to the agreement, plans or recommendations made by advisers cannot form part of a reimbursement agreement without a finding that they have

communicated it to the participants or were otherwise authorised to act on their behalf. The ATO accepts that a mere general practice of following advice will not be sufficient for this purpose. However, the position could be different if the evidence establishes that the parties have agreed in advance to follow the adviser's plans or recommendations.

The Court observed that normally a beneficiary will need to be a party to the reimbursement agreement where the payment of money is proposed to be made to the trustee by a beneficiary. The ATO plans to update TR 2022/4 to ensure that this point is clear.

The other key point raised by the ATO in the decision impact statement is that even if an arrangement doesn't satisfy the requirements of section 100A, it can still potentially trigger Part IVA. The Court has confirmed that when identifying the alternative postulate under the current version of Part IVA the income tax result of that alternative postulate must be disregarded.

Legislation

Parliament sits again on 9 May 2023-24 for the Federal Budget.